RAZOR-WIRED

Reflections on Migration Movements
through Slovenia in 2015

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25

YEARS OF ASPIRATIONS
FOR EQUALITY

Peace Institute
Institue for Contemporary Social and Political Studies

Reflections on Migration Movements through Slovenia in 2015

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Šentilj (no man's land), 2 November 2015

This photo was taken at 10 pm when around 1000 refugees were still waiting in no man's land to cross the border to Austria. The night was really cold (around 2° Celsius) and despite the fires that refugees were lighting, they had little option to warm up. When they were told to leave the accommodation centre in Šentilj, which is only around 400 meters away, they were not informed that they would most likely have to wait long hours before crossing the border and arriving at another refugee camp in Austria. They did not have the possibility to return to the Slovenian camp if they so desired, and remained outside without appropriate clothes, water or food. Only in cases of medical emergencies did the police or soldiers escort them back to the camp.

Introduction

Neža Kogovšek Šalamon and Veronika Bajt

The reasons why this volume is needed and timely are many. Its title "Razor-Wired" wishes to signal a blunt yet honest symbolism of the on-going situation and the grim reality of the manner in which the so-called refugee crisis is being tackled in Slovenia and Europe in general. In the fall of 2011, EU helped the United States in overthrowing Gadafi's regime in Libya, while across the Middle East and North Africa the so-called Arab Spring brought more destabilization and increased the numbers of people fleeing their homes in search of safety, freedom, a better life. The "refugee crisis" which is the central theme of this work, therefore did not begin in 2015, but has a much longer trajectory. It has only very recently sparked interest in the European community, which had for years averted its eyes from the drowned bodies washing up on the beaches of the Mediterranean. It could finally no longer pretend it was business as usual when the refugees on the so-called Balkans migration route chose to cross over from the Middle East to Greece and further, first through Macedonia, Serbia and Hungary, later also Croatia and Slovenia.

Why did they suddenly decide to leave the nearby safe havens and why do they all want to go to Germany, Sweden, Norway, Finland, were probably the most common questions posed by the puzzled public in Slovenia, a country that used to be a part of Yugoslavia until 1991. For one, Angela Merkel's statement that Germany will accept all Syrian refugees no doubt resonated as an encouragement to the downtrodden people that have spent months, even years waiting it out in camps across Turkey, Lebanon or Jordan in gloomy conditions with no prospects for

a continuation of their lives that were so rudely interrupted. Even though most refugees wish to return home as soon as possible, we should not overlook the fact that "home" that once was no longer exists where violence, hunger, collapse of the state and so on have become the new reality. Accepting this grim truth, many hence felt it was time to finally move on, try one more time to pursue their dreams of a better life, a life worth living. For themselves and for their loved ones, especially their children.

The book focuses on the period between September and December 2015, a time of the so-called refugee crisis. Discussing and analysing the increased arrival of refugees to the Republic of Slovenia in the fall of 2015, the goal of this volume is to present facts, explain changes in state policies and procedures used to "process" the refugees, as well as critically analyse state, media and the general public's responses. Its aim is to deepen the understanding of the "refugee crisis", increase the stakeholders' ability of designing better policies for dealing with refugees and finally to encourage the debate about the root causes that force high numbers of people to leave their countries. In spite of the fact that this book is a result of close-up observation and analysis of the situation in Slovenia, the analysis is equally relevant in the international context, for this "crisis of response" involves Europe as a whole.

Already in the spring and summer, it became quite clear to an astute observer that in the event of Hungary's border closure the refugees will reach Slovenia. In the summer of 2015, the Slovenian authorities

started to prepare by drafting a contingency plan setting out the details of policies that would be applied in the case of increased arrivals. In August 2015, the Peace Institute attended a meeting between the Ministry of the Interior and humanitarian and non-governmental organizations, where the contingency plan was presented in greater detail. Considering the experience of Western Balkan countries, which had been subject to increased numbers of arrivals in the months before, it was clear that the plans that were presented by the Slovenian government were inappropriate. The planned reception capacities of Slovenia were far too low and the authorities misestimated the alleged readiness of neighbouring countries to receive people back based on the readmission agreements signed with Slovenia. The government's plans did not take into account the fact that most of the refugees will not apply for asylum in Slovenia and that Croatian authorities will not be willing to accept them when returned.

Fearing that Slovenia is insufficiently prepared and knowing that the migration route will eventually be diverted through this country, as it was evident from Hungary's persistent tightening of the migration policies and discourse, a number of non-governmental organizations (NGOs) addressed a letter of 25 August 2015 to the Slovenian Prime Minister Miro Cerar, calling for a more open EU and Slovenian policy towards migrants and refugees, establishment of a humanitarian "corridor" and stronger solidarity between the EU member states. The Prime Minister responded by meeting non-governmental and humanitarian organizations on 28 August 2015, ensuring that the first response to the "refugee crisis" needs to be a humanitarian one and that migrations should be seen as an opportunity. However, this rhetoric changed immediately after the first bigger group of refugees tried to enter Slovenia on 17 September 2015, by train from Croatia. Different from what the Slovenian authorities have anticipated, the Croatian police was not ready to accept people back

but was transporting them towards the Slovenian territory in an organized way and did not respond to Slovenia's readmission requests. Until mid-January 2016 this has not changed. In days that followed, the Slovenian authorities responded to the increased numbers of arrivals by deploying riot police, closing the border, detaining people in the Aliens Centre and/or holding them within guarded fenced areas.

The state found itself in a completely new situation in which the normative framework in place in the field of migration simply did not work. Civil society actors also saw the danger of the government insisting on a strict implementation of the legal rules that were generally in place for such situations but were completely inappropriate for increased arrivals of people who desperately wanted to move on. With an open letter to the government on 18 September 2015, they again publicly called for the establishment of a safe passage. Finally, the government had no other choice but to recourse to a practice that already existed in Macedonia, Serbia and Croatia, but of which Slovenia did not even want to hear before – a humanitarian "corridor": this means that the state enabled people to enter Slovenia and receive basic reception conditions and continue their journey towards Austria, even if they were without documents. At the same time, the governmental discourse turned into one of "security of people and their property" and "the protection of national interests". The humanitarian aspect of the "refugee crisis", to which the government discourse still paid at least lip service in August, was no longer prevalent.

Increased arrivals that started on 17 September 2015 stopped after five days when Hungary re-opened its borders. Yet as of 17 October, when Hungary's borders were finally closed, refugees could enter Austria only from Slovenia. Using this "corridor", according to the official statistics of the Slovenian Police, 396.240 migrants entered Slovenia from 17 September 2015 to 7 January 2016. Since only a handful of

them applied for asylum in Slovenia and virtually none were successfully returned by the police, almost the same number of people left Slovenia towards Austria and other Western and Northern EU member states. While the media was paying full attention to refugee arrivals during the first two months, the "refugee crisis" then slowly started disappearing from the news as well as from public discourse, even though people continue to travel through Slovenia in their thousands. The media spectacle of the first few weeks was exceptionally similar to any other crisis reporting and, as chapters in this book further elaborate, this helped instil fear and intolerance among the Slovenian public. Without media coverage, most residents of Slovenia would have no idea refugees were even in the country, since their contact with the local population was restricted to a bare minimum.

Throughout this time, the Peace Institute worked on the issue of refugees on several levels that have complemented our otherwise continuous research of migration. The chapters in this volume offer analyses of what happened that span across various disciplines in an effort to introduce to the foreign public the developments surrounding the so-called refugee crisis in Slovenia. We carried out on-the-ground monitoring of the treatment of refugees by the police and other stakeholders, the provision of humanitarian assistance by humanitarian organizations, the respecting of their rights (and duties) by various stakeholders, as well as the registration and other procedures. On numerous occasions, when approached by the media, we provided analysis and comments on state policies and problems that appeared on the ground. As a non-governmental organization and a research institute, we have also endeavoured to cooperate with all the stakeholders involved, particularly using our "in-between" position for enhancing the voice of the activist groups and spontaneous initiatives. Furthermore, we have had the opportunity to engage directly with governmental actors through the Coalition of non-governmental and humanitar-

ian organizations. Using this as an on-going opportunity to demand improvement of the conditions for the refugees, we retained a critical stance towards the authorities throughout. All of these networking efforts, our groundwork and activist stance, as well as our inclusion also in the field of academia, have therefore enabled us to encompass the developments from multiple different perspectives, in this way allowing us to fully grasp the factual situation.

At the end of October, after ten days of extremely intense developments and the continuously increasing numbers of arrivals we observed that the conditions in various reception centres were not improving, but were in fact deteriorating to the extent that they could amount to a violation of Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms which prohibits inhuman and degrading treatment. Namely, the temperatures were decreasing and on some locations people were held in fenced areas without food or water for many hours, forced to sleep out in the open, without appropriate protection. Accordingly, on 29 October 2015, the Peace Institute and other NGOs sent another public letter to the government protesting the slow improvement of procedures and calling for measures that would prevent the threat of human rights violations. On 6 November 2015, we also issued a public statement problematizing more generally the militarized and securitized way in which the Slovenian government was responding to the increased numbers of refugee arrivals. During this time we also attended, alongside other NGOs, a number of meetings with the authorities pointing at specific problems such as the lack of heating, sanitary facilities, formula milk etc. In addition, we organized a number of events, such as public forums and lectures in order to encourage the discussion about the causes of conflicts and the difficult economic situation in refugees' countries of origin for which the global West holds a clear share of responsibility.

The analysis of existing policies shows that in theory an individual has the right to access asylum procedure and claim protection in EU member states. However, the definition of a refugee has become too narrow for all the groups that seek refuge from life-threatening circumstances and physical integrity or wish to escape economic exploitation and despair. The current "refugee crisis" is a reflection of the inability of the state and that of international law to provide protection for them. All EU member states have ratified the Geneva Convention and are bound by the EU asylum and migration law which sets forth basic guarantees for people seeking protection. However, in practice, access to asylum is difficult and most people are forced to try to access the territory of the EU member states by using irregular means. Legal access to territory is now practically impossible.
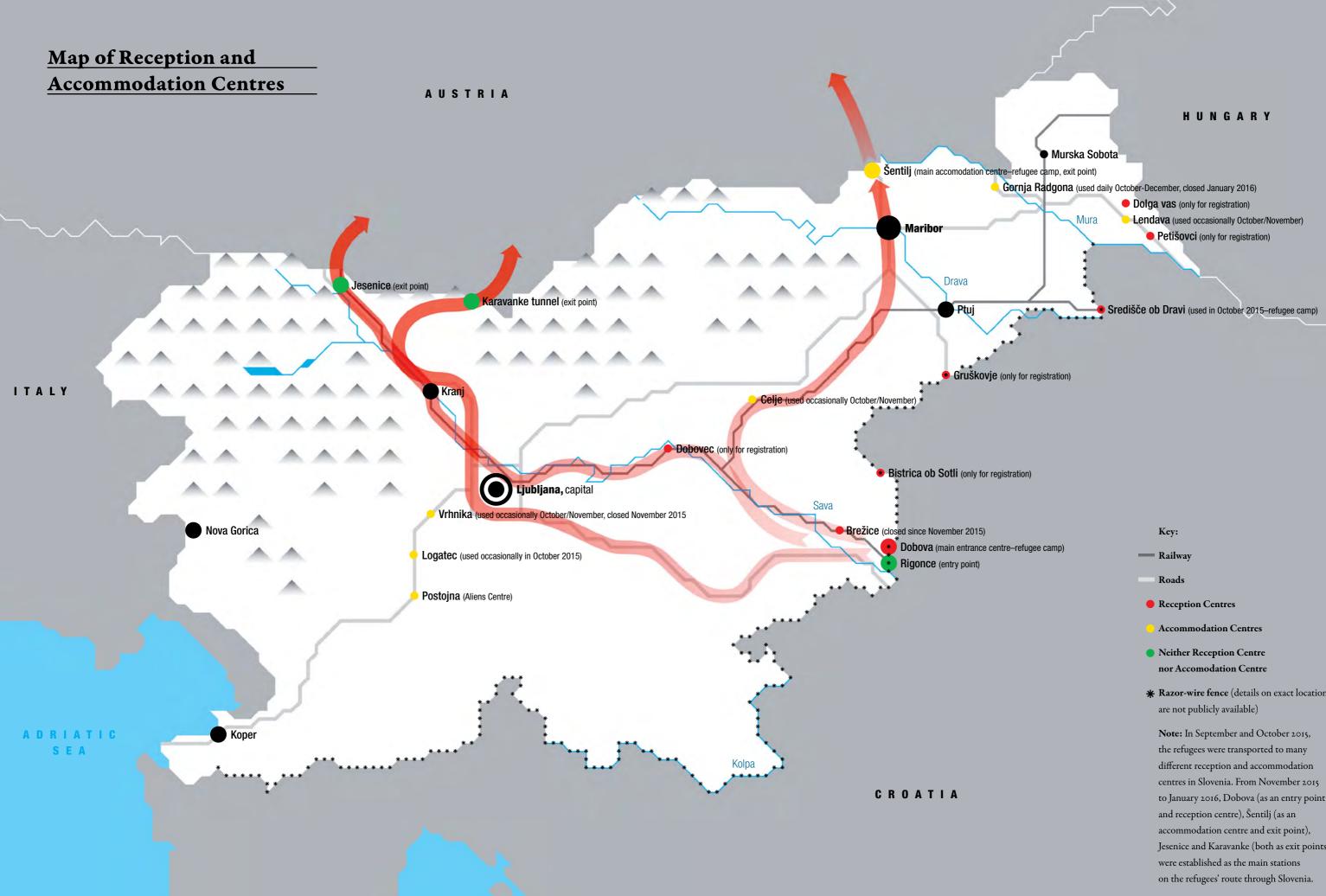
Taking this into account, the present volume wishes to emphasize that the humanitarian crisis in the so-called "refugee crisis" could have been prevented and could have been at least better addressed if the authorities would have put the human rights perspective at the core of their endeavours. Investigating the gaps between law and state practice, Neža Kogovšek Šalamon analyses the legal implications of the factual corridor that Slovenian authorities eventually put in place. Chapters by Maja Ladić, Katarina Vučko and Marc-Antoine Frébutte illustrate what exactly went wrong and how the treatment of refugees could have been bettered. Instead, the situation was treated as a natural disaster and a security threat, hence the response of all the stakeholders/actors within such a context has had only a limited room for manoeuvre. Heavily burdened also by the wider EU security discourse, the Slovenian authorities, a number of media outlets, as well as a significant portion of the public reacted accordingly: with anti-immigrant prejudice and racist hate speech. As analysed by Veronika Bajt, intolerance spiked as a reaction to the rapid increase of various media reports, problematic rhetoric of the political elite, as well as stemming from pre-ex-

isting prejudice, especially towards Islam. As Mojca Pajnik's chapter elaborates, media reporting has shown the declining responsibility of (public) media in their relation to the public. Instead of providing space for informed deliberation, most media outlets merely echo the elite discourse, in this way reproducing the framing of migration as a threat to the nation and to society. As explained in the chapter by Vlasta Jalušič, introducing measures for the "control of migration flows", the tightening of asylum legislation and the erection of a razor wire fence, are signs of all of us renouncing the ideals of equality and freedom. The book title's allusion to the "razor-wire" does not only carry an eerily fitting description of the obvious physical barrier of limitation, but is also a powerful symbol of ignorance and a dead-end, uncompassionate attitude towards refugees as our fellow sufferers of the human condition – the Other. Concluding the volume, Lana Zdravković hence calls for a realization that it is high time to acknowledge radical equality where crossing the border stops being a privilege of rich people from "dominant nations".

Acknowledgements

Map of Reception and Accommodation Centres

AUSTRIA

HUNGARY

Murska Sobota

Šentilj (main accomodation centre–refugee camp, exit point)

Gornja Radgona (used daily October-December, closed January 2016)

Dolga vas (only for registration)

Lendava (used occasionally October/November)

Petišovci (only for registration)

Maribor

Mura

Jesenice (exit point)

Karavanke tunnel (exit point)

Drava

Ptuj

Središče ob Dravi (used in October 2015–refugee camp)

Kranj

ITALY

Gruškovje (only for registration)

Celje (used occasionally October/November)

Dobovec (only for registration)

Bistrica ob Sotli (only for registration)

Ljubljana, capital

Sava

Vrhnika (used occasionally October/November, closed November 2015)

Nova Gorica

Brežice (closed since November 2015)

Logatec (used occasionally in October 2015)

Dobova (main entrance centre–refugee camp)

Rigonce (entry point)

Postojna (Aliens Centre)

Koper

ADRIATIC
SEA

Kolpa

CROATIA

Key:

— Railway

— Roads

● Reception Centres

● Accommodation Centres

● Neither Reception Centre
  nor Accomodation Centre

✳ Razor-wire fence (details on exact location
  are not publicly available)

Note: In September and October 2015,
the refugees were transported to many
different reception and accommodation
centres in Slovenia. From November 2015
to January 2016, Dobova (as an entry point
and reception centre), Šentilj (as an
accommodation centre and exit point),
Jesenice and Karavanke (both as exit points)
were established as the main stations
on the refugees' route through Slovenia.

Slovenia's Response to Increased Arrivals of Refugees: We Don't Want Them, But We Also Don't Understand Why They Don't Want to Stay

Maja Ladić and Katarina Vučko

ABSTRACT

This chapter focuses on the manner in which the Republic of Slovenia prepared for and responded to the increased arrivals of refugees in the summer and autumn of 2015. It depicts the plans the state has made when it became clear that the "Western Balkans migration route" will eventually involve Slovenia. It discusses how these plans were enacted and amended once it became clear that the plan to only accept persons that will apply for asylum in Slovenia and return the others, was inadequate. The chapter also presents experience from the ground and describes reception conditions provided for refugees. The chapter concludes that although a system of registration, reception, accommodation and transportation was established, repressive measures such as building of a razor-wire fence on the Slovenian-Croatian border and lowering of the standards of international protection raise concern about future developments in Slovenia as the "refugee crisis" continues.

Keywords:

Refugees, "refugee crisis", corridor, contingency plan, reception conditions

Dobova, 13 November 2015

This photo shows refugees waiting/resting after the registration procedure in one of the three heated tents. There are no folding beds available therefore people sit or lie on the floor (or stand). Since there are no waste containers, the leftovers of food, old clothes and other trash are scattered around. Refugees don't have access to running water, let alone showers. To ask for clothes, shoes, sanitary material or medical assistance, they are dependent on volunteers, as they are not allowed to walk around the camp unescorted.

INTRODUCTION

This chapter is based on the observations of the Peace Institute staff while monitoring the state's response to mass arrivals of refugees and while visiting reception and accommodation centres for refugees in Slovenia. In the summer of 2015 it became clear that Slovenia would not avoid increased arrivals of refugees and migrants who were trying to reach the European Union (EU) through the "Western Balkans migration route". At the time the route was passing through Serbian and Hungarian territory. In light of the continuing armed conflicts in the Middle East, mass influx of refugees to Greece and Turkey and finally Hungary's announcement that it will close its borders with Serbia and Croatia, Slovenia started to prepare for possible larger numbers of refugees crossing its borders.[1]

In the past years, the number of irregular crossings of Slovenian borders was low and decreasing. As a transit country, Slovenia was also receiving very few applications for international protection. In 2014, only 385 persons applied for international protection, mostly citizens of Syria, Afghanistan, Pakistan, Kosovo, Somalia, Iran and Nigeria (MNZ, 2015a). Due to the low numbers of migrants and asylum seekers Slovenia did not have large reception facilities and was not experienced in dealing with large migration movements, which resulted in slow preparation and a plan that had a number of flaws.

THE STATE'S RESPONSE TO MASS ARRIVALS

Planning

In July 2015, the government adopted the Contingency Plan of the Republic of Slovenia to ensure accommodation and supply in case of increased numbers of applicants for international protection. The government's position was that asylum seekers should be differentiated from the "illegal", "economic migrants" that "abuse" the international protection system; different categories of migrants should be identified and different measures within the auspices of national and EU legislation should be adopted accordingly. The measures foreseen by the government focused on provision of adequate accommodation and protection for asylum seekers, while the plan for irregular migrants who would not apply for asylum included only measures of restriction of movement and return. They would be returned to their country of origin or the country they entered from on the basis of a bilateral agreement on the readmission of persons whose entry or residence is illegal. The government rejected any idea of a humanitarian "corridor" that would allow refugees to merely transit Slovenia's territory as this was not foreseen by national or EU law. This idea was rejected in spite of the fact that at the time such a humanitarian corridor already existed in Croatia through which people were being transported to Hungary. The plan of the Slovenian government therefore completely ignored the situation in Slovenia's neighbouring countries which were only transited by the refugees trying to reach western EU member states. Another symptom of the government's short-sightedness was that the plan had

foreseen accommodation for only 900 asylum seekers, which was less than the number of daily arrivals to Slovenia's neighbouring countries at that time. The plan did not specify the procedures and reception conditions for thousands of people per day who might be sent to Slovenia by Croatia but would not apply for asylum.

Facing reality

In September 2015, Hungary finished building a fence on its border with Serbia and prepared to enforce legislation under which the irregular crossing of a state border would be punishable by a custodial sentence (MMC RTV SLO, 2015a). This was a strong signal that the migration route will change and Slovenia intensified its preparation by increasing the number of accommodation capacities, however only for asylum seekers. Cooperation between the Police, Civil Protection[2] and humanitarian organizations (HOs), among which the Slovenian Red Cross and Slovenian Caritas have the strongest role, was established. At the same time nongovernmental organizations (NGOs) and HOs formed a coalition for cooperation, coordination, monitoring and communication with the authorities.

In mid-September, Hungary closed its border with Serbia and the migration route was re-directed towards Slovenia. At first, the authorities tried to follow the procedures foreseen in the contingency plan. On 17 September, the first group of around 200 refugees arrived to Slovenia (Dobova) by train from Croatia. They did not apply for asylum in Slovenia, thus Slovenian police treated them as irregular migrants and tried to return them to Croatia in accordance with the readmission agreement signed

between the two states. However, Croatia refused to accept them. In order to prevent new arrivals, the Slovenian and Croatian police suspended the international train line between the two countries (Slovenske železnice, 2015). Refugees who intended to come to Slovenia by train, but could not do so because the train line was suspended, reached Slovenia's borders with Croatia by foot or other private means of transportation. When they arrived at the land border crossings, the Slovenian police refused them entry and the refugees were stranded in no man's land, in the rain, without shelter, food, water, sanitations or medical help (Videmšek, 2015). The pressure was building up as the refugees were protesting jointly with local activists, to which the police on some occasions responded with teargas (MMC RTV SLO, 2015c). This also meant that migrants started entering Slovenian territory at the green border, outside the official border crossings, however all those apprehended while doing so were registered and placed under detention. The situation was rather chaotic. It seemed that the Slovenian government was taking ad hoc decisions, without a clear plan. Tensions occurred between Slovenia and Croatia, and the Slovenian Prime Minister Miro Cerar stated that Croatia lost all control immediately after the arrival of the first groups of refugees and accused it of intentionally directing refugees towards Slovenia, abandoning the joint border control agreement (MMC RTV SLO, 2015b).

However, similarly to other countries along the Western Balkans migration route, the Slovenian authorities became aware that some kind of a de facto "humanitarian corridor" would have to be established in order to deal with the situation. After two days, Slovenia began to allow all refugees to enter the country at official bor-

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[1] In this chapter the term "refugees" is used as a generic term for persons travelling on the "Western Balkan route" and does not intend to imply that these persons were granted international protection status.

[2] Civil Protection is a part of an organized system of protection against natural and other disasters or a specific part of organized forces for protection, rescue and assistance. It falls under the Administration of the Republic of Slovenia for Civil Protection and Disaster Relief which is a constituent body of the Ministry of Defence (MO, 2015).

der crossings, and after registering them, enabled them to continue their way en route to Austria. After five days, the route through Slovenia was temporarily halted as Croatia again started transporting refugees to its border with Hungary. In mid-October, Hungary completed building the fence on its Croatian border, consequently completely closing its border with Croatia. Since then, the main Western Balkans migration route has run through Slovenia. At the same time, the Croatian police started transporting people towards Slovenia, releasing them a few meters before the border and pointing them in the direction they needed to go. Slovenia tried to place an upper limit to the number of migrants it was willing to receive. However, having to deal with mass arrivals itself, Croatia was not ready to accept these terms. Consequently, the Croatian police started bringing people to the border crossings that had not been agreed on between the two states.

In the meantime, Slovenia set up larger reception and accommodation centres near the borders (at the entry and exit points) and organized transportation lines between them. Some of the centres were completely inappropriate for the reception of large numbers of refugees. As we describe in the following section, the reception conditions in some of these centres were completely inadequate.

Reception conditions in reception and accommodation centres, at train stations and at the borders

In terms of capacities set up for refugees, the statistics regarding the number of people that Slovenia was able to "host" at a specific point in time provided by the Slovenian government varied significantly: around 900 in August, then around 4.000 in Sep-

tember, and up to 9.000 in October. The centres set up for refugees consisted of reception centres and accommodation centres. Initially, *reception centres* (which are located mainly at the border with Croatia and are under the supervision of the police) were designed as locations where refugees would remain only for a short period of time in order to be registered and to receive basic humanitarian assistance. Then they would be taken to accommodation centres where higher quality humanitarian assistance and living conditions would be ensured. *Accommodation centres*, which are under the supervision of the Civil Protection, were designed as locations where refugees would remain for a longer period, rest overnight, take a shower, and have a hot meal, before continuing towards Austria. However, it became obvious very quickly that in practice this system was not functioning as planned (Mirovni inštitut, 2015b).

Namely, people were often forced to wait long hours before crossing the border into Slovenia, yet alone arriving at a reception centre. Even later, when Slovenia and Croatia concluded an agreement that all refugees would arrive to a location in Slovenia by train or bus organized by the Croatian authorities, without even stopping at the border, people had to wait on the train or bus for several hours without access to food, water, medical care or other assistance (Mirovni inštitut, 2015b). Therefore they often arrived to reception centres exhausted, hungry, thirsty, in need for medical care, and desperate to use a toilet. However, the Slovenian authorities set up a system according to which everyone had to be registered first before receiving humanitarian assistance. Exceptions were made only for those in urgent need of medical care (Mirovni inštitut, 2015c, 2015d, 2015e).

Due to very slow registration procedures, especially at the beginning, people were forced to wait in reception centres for long hours, sleep outside overnight or in extreme cases several nights. In many instances there was no running water available, showers, hot meals, tea or

hot water, despite very low temperatures for most of the time. After being registered, people were provided with a cold meal (usually consisting of bread and fish cans), apples, milk for the children and water. There were some cases when people did not receive even cold meals, and there were constant problems with providing children and babies with special food or formula milk (Mirovni inštitut, 2015c, 2015d, 2015e). If refugees were "lucky" to arrive to a reception centre with heated tents such as those in Dobova or Šentilj, they were certainly better off than those arriving at Brežice, for example (Mirovni inštitut, 2015c, 2015d, 2015e).

The reception centre in Brežice, which is now closed, can be highlighted as an example of a centre with the worst conditions in Slovenia. People were forced to wait outside in an empty fenced muddy area despite very cold or rainy weather, also at night, without access to food (sometimes for over 12 hours), clothes or blankets. Access to toilets was also a problem due to overcrowding in some parts of the area which made access to toilets located at the other part of the area impossible. Among the people spending a night or two outside there were many children and babies. In order to warm up, people made fire by burning wood, but also blankets, plastic and other trash. The smell was terrible, the air was smoky and it was difficult to breathe, especially for sick people and small children. People did not receive information about the procedures and the prospects for the continuation of their journey (Mirovni inštitut, 2015c, 2015d, 2015e).

The conditions in Rigonce (Mirovni inštitut, 2015h) and for a long time also in Šentilj between the two borders (Mirovni inštitut, 2015f, 2015g) can be described as chaotic and inhumane. Both locations were basically just empty areas with no facilities for people waiting long hours to enter or exit the country. Based on their observations of the situation first hand, a group of NGOs, specializing in human rights monitoring, raised concerns that such conditions might amount to inhumane and degrading treatment leading to a possi-

ble violation of Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (see The call to the Prime Minister of Slovenia Miro Cerar by NGOs, 2015).

Conditions in accommodation centres were significantly better. In time, with better organisation and coordination among all stakeholders, reception conditions at the reception centres also improved. Refugees were mainly brought to heated tents, received food upon arrival in the centre before the registration took place, had access to medical care, and could receive warm clothes, shoes and blankets. The system of provision of basic care is now in place, however, it still often fails in practice (Mirovni inštitut, 2015i, 2015j, 2015l). Generally, the treatment of refugees depends on the day, location and people working at that location (the police, the staff of Civil Protection, Red Cross and other HOs, and volunteers). It also depends significantly on coordination among all these actors at each location. When the coordination is good, work is divided well, and services are provided by people that really care, the refugees also receive better treatment and support (Mirovni inštitut, 2015a). In the opposite case, insufficient coordination results in:

- groups of people not receiving food for many hours because some staff members thought refugees already received it but did not bother to check if this was true;

- babies not getting special baby food or formula milk because no one remembered to distribute it or there was no heat available or there were no baby bottles at the site, with no one arranging for more bottles to be brought from the main warehouses;

- people not receiving clothes or shoes because the refugees did not have access to the distribution tent and volunteers were not specifically told to approach them and ask them what

they need, or simply because there were no more jackets or shoes at the site and no one arranged for more items to be brought from the main warehouses;

- people not having access to running water because the police had erected fences all around the tent where people were supposed to wait and did not allow them to move beyond these perimeter fences; or

- hundreds of people being forced to use only a couple of toilets which were in terrible condition, again because the police set up fences in such a way that prevented refugees access to other 20 or more toilets available on the other side of the reception centre.

One of the problems observed was that medical care, which was in principle accessible to all, was by police officers often seen as necessary only in very urgent cases. Sometimes the police did not allow volunteers to escort adult refugees to the medical tent if they did not look sick. When it came to children, the police were mostly more understanding (Mirovni inštitut, 2015i, 2015j, 2015l). The problem of inadequate provision of basic care was aggravated by the fact that refugees were not allowed to leave the camp (Mirovni inštitut, 2015a).

The role of non-governmental and humanitarian organizations and other volunteer groups

The role of NGOs and HOs as well as self-organized ad hoc groups, activists and volunteers was and continues to be crucial for the provision of basic care for the refugees. When first groups of refugees arriving from Croatia reached the Slovenian border, large HOs such as the Slovenian Red Cross and Caritas proved to be very rigid and slow in their response. Smaller NGOs, HOs and especially self-organized activists were often the first to help and assist people in the field, sometimes even the only ones to do so. They provided food, set up field kitchens, collected donations and arranged distribution etc.

In the beginning of the crisis, the state structures seemed slow on their feet, failing to meet the requirements that the situation demanded in an adequate time frame when activating mechanisms such as Civil Protection in order to start tackling the emergency at hand. The same goes for larger HOs. However, as soon as they were prepared and present in the field, they made it abundantly clear that self-organized groups or individuals were no longer needed nor wanted. Observing from a distance, it all seemed as a strange game in which the state and large HOs were pushing "unregistered" volunteers away. Quite quickly the latter were banned from all locations, not only reception and accommodation centres, but also in no man's land and Dobova train station. The state and large HOs defended such stance towards self-organized volunteers by stating that they did not have enough food or clothes to be distributed to all refugees, which might cause chaos and fights among them, or that their behaviour was inappropriate (MMC RTV SLO, 2015e).

Issues of inappropriate behaviour of some "registered" volunteers operating within HOs have been raised as well (for example, there were observations that some of these volunteers were blocking the distribution of assistance and avoiding contact with the refugees), however we have received no information that any charges had been brought against them or that anyone had been banned from the camps. In October it was already obvious that only those that "fit in the system" were welcome to be present in the field (Mirovni inštitut, 2015e), meaning that they strictly followed the instructions, obeyed their superiors and did not question the system. At one point, the media were also no longer allowed inside or anywhere near the refugee camps. As this is still the case, most information about the situation in reception and accommodation centres is spread through social media.

HOs and NGOs have been coordinating their work and exchanging information throughout the crisis. Within a larger coordination two specific groups were formed: HOs and monitoring NGOs. Organizations from the monitoring group (the Peace Institute also being part of it) are the only ones with access to all reception and accommodation centres. The main purpose of their presence in the field is to monitor the situation and protection of human rights of the refugees, observe the provision of reception conditions, an adequate care, ensure provision of information, identify problems and suggest solutions. However, also these organizations, when in the field, were often performing humanitarian work, mainly as a result of bad coordination among the others involved. The group of NGOs wrote several appeals and had several meetings with the authorities, as well as with the HOs in order to raise issues of concern and call for resolving them. In addition to these organizations, the United Nations High Commissioner for Refugees (UNHCR) is present in all reception and accommodation centres as well as entry and exit points. Its main role is to monitor the rights of refugees, the provision of information on access to asylum procedure in Slovenia, and material humanitarian assistance to the Slovenian government.

Registration procedure

We have observed the registration procedure on several occasions in October and November. At first, the police were carrying out full registration procedures, however later on this changed and varied from one day to another, depending on the situation, location and the number of people arriving to Slovenia per day.

Each registration procedure started with the "security check". The police examined each person and their belongings – male police officers were examining men, while women and children were examined by female officers. At this point the police seized all potentially dangerous objects (i.e. knives) and examined mobile phones of randomly selected persons. The police checked the photos, call history and contacts saved in those phones. Occasionally, especially after the November terrorist attacks in Paris, the police randomly selected people for more thorough examination with the assistance of an interpreter.

After the "security check" the registration procedure began. Families were being registered together. In its full extent, this meant the police checked the documents of those people who had them or took personal details from each person (name, date of birth and country of origin), fingerprints and a picture. Each person was then issued a document called "permission to remain" in Slovenia with validity of six months based on Article 73 of the Aliens Act. This document was issued to them only in Slovenian language thus the refugees could not understand it. By this decision, refugees are legally allowed to move freely within Slovenia's borders. But in reality they are deprived of their liberty as they are kept within the "corridor" - they are not allowed to leave the centres or continue their way towards Austria on their own. The transport is free of

charge, however, by limiting people's movement, they are left to the conditions and the care provided by the state.

Already in October we noticed that in practice the registration procedure was different from one day to another. When the number of people arriving was the highest, it seemed that at some locations the police were only writing down personal details of refugees on paper spread sheets without entering them into a computer. Not everybody was asked to give their fingerprints anymore, and in the second half of November the police did not issue the "permission to remain" to all refugees (Mirovni inštitut, 2015j, 2015l).

The lack of interpreters

By law, interpreters should be present during the registration procedure as the majority of the refugees do not speak English and neither do many of the police officers. However, the state has provided only a very small number of interpreters in October, while in November we have not seen any interpreters deployed to the field by the state any more. Since October, UN-HCR is providing a larger (but still insufficient) number of interpreters for Arabic and Farsi languages and most of the time one interpreter for each language is present at each reception or accommodation centre.

Interpreters were needed at all times, to translate for the police during the registration procedure, for doctors during medical assistance, for volunteers during the distribution of clothes. At times, the police required an interpreter to go to the police station to assist with a thorough examination of a randomly selected person, or to escort the patient to a nearby hospital. In such cases the only interpreter for a certain language was absent for a long time, meaning that there was no one else at the reception or accommodation centre to translate, thus the communication with refugees was

sometimes not possible or difficult (Mirovni inštitut, 2015b, 2015d, 2015j). The role of translators was and continues to be indispensable. Very valuable was also the presence of volunteers from different countries (some were from as far as USA) that spoke the Arabic or Farsi language. Often refugees that spoke English were asked to help out in different situations.

Deteriorating attitude of the police and the army towards the refugees

At a number of occasions we have observed unprofessional conduct of policemen and soldiers towards the refugees (Mirovni inštitut, 2015f, 2015j). It seems that the longer Slovenia is experiencing increased arrival of refugees the worse the conduct of the officers is getting. Humiliating remarks, cursing and harsh pushing were witnessed in situations that did not justify such behaviour whatsoever. On the contrary, refugees were calm and were keen to follow the instructions of the police. But the instructions were often unclear and people were even yelled at in the Slovenian language. The most critical moments when such conduct was observed were during registration and boarding on buses and trains when refugees were leaving an accommodation or reception centre. Inappropriate conduct was often a consequence of the police and the army creating confusing situations which the officers then "resolved" by yelling and pushing. These situations were sometimes connected with the fact that refugees arrive *en masse* which involves potential stampedes that the police address by employing crowd control tactics. Unnecessary yelling and pushing caused panic situations which resulted in the separation of families who got lost and ended up going to different locations or crossed the border with Austria separately. We did not notice policemen getting reprimanded for their conduct by

their superiors. The fact that the uniforms of most policemen and soldiers do not have name tags and that many of them wear balaclavas (mask caps that cover their faces), further promotes the sense of impunity. We have raised these concerns in the Peace Institute's Letter to the Police (2015).

Differentiation of people on grounds of nationality

There are confirmed cases of refugees that the Republic of Slovenia did treat differently from the rest of refugees based on their nationality. On 15 November, a group of men from Morocco arrived (together with other refugees) by train to Dobova. They were separated from the rest of the refugees and were not allowed to continue their journey to Austria. Without any explanation, they were taken to the Aliens Centre[3] in Postojna instead. We visited the Aliens Centre, had a conversation with the manager of the centre, went to all the sections of the building, observed the conditions there, and talked to people of different nationalities that were detained there. At the time of our visit there were around 100 people detained, among them 79 men from Morocco. 71 of them were separated from the larger group of refugees that arrived to Dobova by train, and eight of them travelling on their own outside the corridor were returned to Slovenia from Austria. Other refugees detained in the Aliens Centre were from Syria, Iraq, Iran, Lebanon, Egypt, Tunisia, and were all refused entry to the Schengen area already in Greece (Mirovni inštitut, 2015k).

It remains unclear why the police took the decision to restrict the Moroccans' freedom of movement and on which legal grounds, as these Moroccans were

not refused entry to the Schengen area. This group of Moroccans did not receive unequal treatment only in comparison to other refugees, but also in comparison to other citizens of Morocco transiting through Slovenia. Around 160 of them arrived to Slovenia only one day later, on 16 November, and were not separated from other refugees nor were they taken to the Aliens Centre. They were allowed to continue their way to Austria within the corridor with other refugees (24ur.com, 2015). These 79 men from Morocco were in the Aliens Centre for at least three weeks. On 4 December, approximately half of them were released from this institution, while the rest were released in days that followed (Policija, 2015a). It was clear since the first day that the Slovenian authorities could only return them to Morocco in the form of voluntary return which only four refugees agreed to. On 3 December after Croatia rejected the request to accept them on the basis of the bilateral readmission agreement, the Slovenian authorities issued them "permission to remain" documents and enabled them to continue their journey together with other refugees within the corridor (Mirovni inštitut, 2015k).

Asylum seekers in Slovenia since September

The so called "refugee crisis" did not result in a high number of asylum applications in Slovenia at the time. In 2015, the number of applications for international protection in Slovenia was even significantly lower than in 2014. Out of more than 300.000 people that transited the state from September to December (Policija, 2015a), only around 100 persons lodged an asylum application (MNZ, 2015a). According to the official statistics 4 applicants were from Syria, 11

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3   "The Aliens Centre is a police service responsible for efficient and effective removal of foreigners from the country. Its task is to accommodate and provide care for foreigners in its facilities for the period that is necessary for the deportation procedure" (Policija, 2015b).

from Pakistan, 23 from Iraq, 16 from Iran, 15 from Afghanistan, and the rest from Albania, Serbia, Kosovo, Bosnia and Herzegovina and some other countries (ibid.). Around half of the asylum seekers applying since September have already left Slovenia and continued on their way, without having waited for the asylum procedure to end.

In spite of these low statistics and based on the experience with the "refugee crisis", the government is considering further restrictions to Slovenia's asylum legislation. In November 2015, the Slovenian Prime Minister Miro Cerar stated that Slovenia is considering a stricter regime for asylum seekers. Although he himself stated that Slovenia's legal standards for asylum seekers are lower than those of Germany or Sweden, and are already close to the minimum limits set by EU law, he still sees possibilities for a stricter regime if necessary (MMC RTV SLO, 2015d). Indeed, just a month later, the Ministry of the Interior presented a Draft International Protection Act, materialising the Prime Minister's announcement of restrictions (MNZ, 2015b). Earlier in 2015, the Ministry of the Interior already prepared a draft of the new International Protection Act in order to transpose Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) and Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast). But in the light of the refugee crisis the adoption of the amendments was postponed so that the before mentioned restrictions could be included. The new draft now includes new rules on border procedures to enable admissibility and/or substantive examination procedures at the border or in a potential transit zone,

should Slovenia ever decide to create one. In case of high numbers of arrivals of refugees who would apply for asylum at the border or in a transit zone, these procedures could be carried out at these locations if the asylum seekers are accommodated close to the border or in a transit zone. In such procedures the deadline for issuing a decision would be 14 days. The draft law also foresees the abolishment of the one-time financial assistance for persons with the status of international protection who would not have sufficient financial means for basic subsistence. If these amendments are adopted, the already restrictive asylum procedure that has always resulted in low recognition rates will become even stricter, approaching the bare minimums set by EU Directives. It seems that Slovenian authorities are preparing for larger numbers of asylum seekers that might start applying for asylum more massively should the border with Austria close down.

Securitization and militarization of migration management

While civil society called for solidarity, acceptance and the humane treatment of refugees, the more common response of society has been marked by fear, racism, Islamophobia and hate speech (as further discussed by Bajt and Pajnik in this volume). This climate was worsened with the government's constant emphasis on security aspects of mass arrivals of refugees. Its actions corresponded with the public's growing fear.[4]

As already mentioned, refugees' freedom of movement is restricted which is in line with the government security discourse. Such discourse is paving the way for further securitization of the mass migration flows Slovenia is experiencing. Restriction of personal freedom also corresponds directly to the public's belief in the "dangerousness" of the refugees – the government is convinced that these are the kind of policies that are to be expected from authorities, should they retain the trust of the public. Further securitization of state policies is visible from the fact that, within the centres, refugees are supervized by overwhelming numbers of police officers and soldiers in full gear, including weapons. This creates a threatening environment and provides for an impression of "state of emergency" or an extraordinary "security situation". In reality this type of police and army presence is not needed at all (Mirovni inštitut, 2015c, 2015f). Namely, between 16 October and 12 November, the period in which 188.000 refugees entered Slovenia, the police had to intervene only 23 times and only nine times measures of repression were used (MMC RTV SLO, 2015f). In two of the incidents that required police intervention a knife was used in a fight but in most cases these were minor fights among the refugees. Often these incidents took place when refugees were kept in a centre for longer periods of time, without food or proper shelter or in chaotic situations caused by inadequate instructions and procedures of the police (Mirovni inštitut, 2015f).

Securitization of migration management was followed by measures indicating a trend of militarization. In October, practically overnight, an amendment to the Defence Act was adopted in a fast track procedure,

delegating some of the police powers to the army in order to protect the state border if the security situation so required (Act Supplementing the Defence Act, 2015). The justification for the amendment was that the Slovenian police do not have the sufficient manpower to manage such migration flows and that the assistance of the army is urgently needed. This amendment was adopted regardless of the fact that the existing law already allowed engagement of the army through the responsibility to protect in "natural and other disasters" and that the army was at that time in fact already present on the ground. From the perspective of the authorities the problem was, that before the amendment the army was only allowed to act hand in hand with the police, while these amendments would allow soldiers to act independently. A serious concern was raised by the fact that the validity of this amendment is not temporary and tied to this particular situation (the "refugee crisis"). On the contrary, on the basis of this amendment the delegation of powers can be activated at any time if supported by a two-third majority of the members of the National Assembly which opens a Pandora's Box of possibilities for quashing initiatives such as civic protests. Another problem is that while the Police Tasks and Powers Act prescribes a complaint mechanism against the work of police officers, the Defence Act does not include such complaint mechanism, meaning that civilians have no recourse against the conduct of soldiers. The amendment only stipulates that the army needs to inform the police on the fact that it had used these powers, but does not provide for any additional link between the work of the army and the work of the police, creating room for confusion in terms of hierarchy on the ground once the amendment enters into effect.[5]

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4   The results of the survey of the newspaper Delo on 13 September 2015 (before first groups of refugees arrived to Slovenia) shows that 68% of those asked were bothered by the general negative attitude towards the refugees, only 11% saw the refugee situation as a security issue, and 76% were against or strongly against Slovenia putting up a fence on the border like Hungary did at that time (Delo, 2015). However, a couple of months later the results of the survey of newspaper Dnevnik on 22 November show that 79% of those asked agree with the fence on the Slovenian border (MMC RTV SLO, 2015g). Similarly, the survey of the newspaper Večer on 28 November shows that 71% of those asked supported the razor-blade wire on the Slovenian border with Croatia (Večer, 2015).

5   The amendment prescribes *vacatio legis* (i.e. a date when the amendments enter into force) of one day after its publication in the Official Gazette, which was postponed as Radio Student filed an initiative for a referendum against the amendment. This initiative was later rejected by the National Assembly and Radio Student challenged the constitutionality of this decision before the Constitutional Court of the Republic of Slovenia. On 3 December 2015, the Constitutional Court issued the decision no. U-II-2/15-10 that the decision of the National Assembly is not unconstitutional, assessing that the amendment addresses an urgent need to provide security, a circumstance in which a referendum initiative can be rejected.

The process of securitization and militarization continued with the setting up of a razor-wire fence at the Slovenian border with Croatia. Although just recently the government claimed that Slovenia would not build fences on its border and even categorically denied rumours of the fence already being purchased, in the beginning of November it did exactly that. The fact that a razor-wire fence was chosen raises serious concerns due to its great potential for injuring persons and animals. This decision was put into action despite the fact that there were no irregular border crossings outside the agreed entry points and in a time when the number of daily arrivals was continuously decreasing.[6] The government avoids the term "fence". Instead it uses the euphemism "technical obstacles" and claims that its purpose is not to close the border but to "direct refugees" towards the entry points. Setting up fences aimed at "directing refugees" seems particularly pointless since Croatia respects the mutual agreement and announces arrival of new refugees to the border three hours in advance and only transports them to locations agreed between the states. In theory it is of course always possible that Croatian authorities opt for again sending refugees towards Slovenia at locations that were not agreed upon, especially if the countries on the migration route close their borders and discontinue the humanitarian corridor. In this case, the razor-wire fence would in fact start performing its function while at the same time causing serious injuries that are for the moment killing "only" unfortunate game. It needs to be stressed clearly that measures that have a potential to cause such serious injuries are in opposition to international human rights principles.

Since a large segment of the public called for such repressive measures (Večer, 2015), the fact that Slovenia fenced itself from Croatia, with which it was once shared a common state and from which it did not feel the need to fence away even in the turbulent times of war after Yugoslavia's dissolution in the 1990s, did not stir as much public opposition as one might expect. However, the discontent and turmoil is increasing in local communities on both sides of the fence, since the fence is disrupting the close ties of these cross-border communities and negatively affects economy, agriculture, tourism, environment and wildlife. Putting up the razor-wire fence again sparked tensions with the Croatian government, particularly since some parts of the Slovenian-Croatian border are not yet defined. Croatia has asked Slovenia to dismantle the fence several times.

Conclusion

Slovenia's first response, reflected in the Contingency Plan, raised concerns about its capability to face the challenge of the increased arrival of refugees into the country. As the situation developed, the authorities adapted and as a result a system of reception, registration, accommodation and transportation was established. Cooperation among governmental and non-governmental actors was built, though it should be noted that on the initiative of the latter. Still, months and numerous NGO demands for improvement later, too often basic needs for food, water, clothes, blankets and the adequate shelter of refugees were not met. Many of these were caused by inadequate communication between institutions and failure to include all possible resources outside the core constellation of the police, Civil Protection and the Slovenian Red Cross. Building a fence on the Croatian border and decreasing the standards of international protection and the deterioration of police and army's attitude towards the refugees, raise concern about future repressive measures of the state as the refugee crisis continues.

The Slovenian authorities are striving for refugees to transit through Slovenia as quickly as possible, not encouraging them to remain in the country. At the same time, the public resented the fact that the vast majority of refugees wished to only transit Slovenia and questioned the motives of refugees who wished to choose on their own accord in which country they will seek refuge. *We don't want them, but we also don't understand why they don't want to stay* is the attitude that intertwines xenophobia and the resentment towards refugees who are not staying in Slovenia. It is obvious that Slovenia and its residents are responding to the "refugee crisis" emotionally. However, in these responses there is lack of real policies, respect for human rights, and accountability governed by the state.

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6   The highest numbers of daily arrivals in October 2015 were between 9.000 and 12.000, in the beginning of November this number has decreased to between 4.000 and 9.000, in December the number of daily arrivals varied between 1.000 and 5.000 (Policija, 2015a). At the time of writing this paper Slovenia continues with putting up the fence along its border with Croatia and has so far put up around 140 km of fences.

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The Role of Foreign Volunteers

Marc-Antoine Frébutte

ABSTRACT

The purpose of this chapter is to understand the process of integration of foreign volunteers in Slovenia and their role in the detention and accommodation centres during the refugee crisis. It is based on participative observation and on structured-interviews with foreign volunteers I met during my activities in various camps. In the first part, I approach the problem of the lack of information and consistency for volunteers. In the second, the focus is on the professionalization of the NGOs' employees and the problems of communication between NGO and foreign volunteers. Finally, some recommendations are given in order to reconsider and improve the volunteer's experience.

Keywords:

Refugee crisis, volunteers, detention and accommodation centres

INTRODUCTION

About 300.000 refugees have transited through Slovenia since the middle of October 2015 and the closure of borders between Hungary and Croatia until mid-December. For these refugees, the transition through Slovenia was relatively fast, lasting approximately one day. Immediately after their arrival on Slovenian territory, the registration procedure was done at the camp and train station of Dobova. Refugees were then taken to the accommodation centres of Šentilj or Gornja Radgona where they remained until the Austrian authorities accepted them. These refugee camps are managed by three entities: police, Civil Protection and the Red Cross. While the police and Civil Protection use their regular staff, the various humanitarian organizations and NGOs have had to rely heavily on local or foreign volunteers. For this chapter, I tried to understand the role of foreign volunteers and how they have been integrated into the operation of the centres. The research is based on my empirical research, participative observation, informal discussions and on structured-interviews with five foreign volunteers met during the activities in the camp.[1]

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1   The interviews were conducted with five foreign volunteers that I met in the camps between 30 November and 6 December 2015. The interviews were conducted via email and face to face. Tobias and Tommasi are from Italy, Clara is from Spain, Christian from Germany and Katja from Slovakia. Christian is in his thirties, and all the other interviewed volunteers are in their twenties. Except Clara, who came with a group, they all registered with a local non-governmental or humanitarian organization to access the camps and work as volunteers.

Dobova, 13 November 2015

When refugees arrive to Dobova reception centre, they first receive food: water, bread, cheese spread, fish cans, apples, milk and chocolate spread for the children. Special food or formula milk for babies are also available in the centre, however, the distribution mainly depends on the staff working in each shift. It happened before that hot water was not available or bottles were out of stock or simply no one remembered to provide them.

Lack of information and consistency

In mid-October 2015, after arriving in Ljubljana, just as the refugees had begun to transit through Slovenia towards Austria, I had the opportunity to go to the camps of Brežice, Dobova and Šentilj to see the evolution of the operation in the camps from the beginning until mid-December. This evolution took place in terms of infrastructures, the reception of refugees, and in the use of local and foreign human resources. The situations I have seen are very different depending on each location. Largely due to the different functions of the camps, whether the latter were that of reception centres or accommodation centres, but also because of the division of roles between various humanitarian organizations and non-governmental organizations – HO and NGOs (Slovenian Red Cross, Caritas, Slovene Philanthropy). Upon their arrival at the camp, volunteers had to be registered at the Civil Protection office to receive accreditations for the day, which allowed them to access the camp. They were then allocated by the coordinators to different sectors according to the current needs. During a normal day, there were three seven-hour shifts: from 8am to 3pm, from 3pm to 10pm, and from 10pm to 5am. The night shift was often hard to fill as not so many volunteers were available at that time. The tasks consisted of the distribution of food and clothes, sorting the clothes donated to the NGOs, helping to move the pallets and the blankets, cleaning the tents after the departure of the refugees and assisting in medical care.

Foreign volunteers who came to the camps were organized in different ways. Some arrived with other foreign NGOs or HOs (like the Hungarian or Slovakian Caritas) and joined those teams in the field. Some came as self-organized groups, without any HO or NGO statutes, travelling through the Balkans and bringing help where they feel they can be helpful. And finally, some individuals came sponta-neously, registering with an NGO or HO in order to get access to the camps and help.

In general, the situation and the tasks are quite simple to understand. Prior experience is helpful in identifying what should be done. But for some specific tasks, such as the reunification of separated families in the Restoring Family Link (RFL) program, the instructions were not necessarily given, leaving the volunteers to try and cope as best as they can on their own. Katja, a Slovak volunteer, explained:

At first, I felt quite useless because I did not get a lot of information about what to do and in general about what is going on. So the experience was confusing, but after a while I got a chance to look around and get used to the situation, I was able to find my place. (Interview n. 1, 1 December 2015)

Another problem for the volunteers was the lack of consistency between what the different parties controlling the camps are saying. Indeed, the instructions given by the NGOs were sometimes different from those given by the police and Civil Protection. As Katja explained:

I got different instructions from different people. Some people told me I cannot go to some areas, others that I can in order to realize my task. I was confused about what I can and cannot do. (Interview n. 1, 1 December 2015)

For my part, I also felt this frustration of not really knowing what I should and could do. When I was working with Restoring Family Link, my main task was to reunite separated families, but also to bring to the doctor those in need. To do so, I had to go in the tents housing the refugees so they could tell me about their problems. However, the police have often made it impossible to execute my mission by preventing me from accessing tents in the camp, justifying their decision by stating that my presence was creating problems and that, as a policeman supervising the refugees told me, "if you would not go inside the tents, the refugees would not need you". The problem of contradictory instructions also arose between the different camps. For volunteers working on different locations, the integration of specific rules for each new camp had to be done quickly. For Clara, a Spanish volunteer, the problem was that there were

differences of what is allowed to do also between camps. In Šentilj, you can carry out tasks that you cannot do in Dobova, and vice versa. For example, in Šentilj, you are free to go everywhere, nobody stops you or asks you what you are doing. In Dobova, police are always controlling, and sometimes limiting access to some areas. When you do not know, it is confusing. (Interview n. 4, 4 December 2015)[2]

We can assume that these differences are related to the nature and the function of the camps. We can predict that in the registration centres, the police are aiming to keep strict control of the refugees, as these remain there for a short time, but it would then be important to define clear rules.

Professionalization of the staff

Regarding the staff working in the camps, and more specifically those working for the various NGOs active in the field, the first observation was a move towards a slow "professionalization" and "regionalization" of the teams. Indeed, at the beginning of the "refugee crisis" in Slovenia, teams of NGOs in the camps consisted largely of volunteers, meaning people who came to work voluntarily in order to provide assistance to refugees. There were no differences in the roles and functions attributed to the volunteers, whether they were locals or foreigners, as they were simply added to the current teams and were performing the same tasks. From my personal observations and discussions with other volunteers, I noted that a consequent part of the foreign volunteers engaged in Slovenian refugee camps are actually foreigners residing in the country and therefore could be considered as "locals". Like in the former Croatian registration camp of Opatovac, where I was also volunteering, the process of professionalization was slowly set up in Slovenia. The teams are now almost entirely composed of persons paid to perform the various tasks in the camps and are recruited locally. Locally means that the NGOs and HOs prioritized the recruitment of people living close to the camps. This professionalization helped specialize the activities of humanitarian organizations and non-governmental organizations by defining their assigned functions. In Dobova, the Red Cross now handles the distribution of food and clothing, and conducts the RFL program. Slovene Philanthropy performs sanitary tasks in the tents of the camp, and helps relieve the refugees carrying a heavy load of personal belongings of their burden. For its part, Caritas provides first aid. In Šentilj, the Red Cross handles the medical support and the RFL program. Slovene Philanthropy distributes clothes and takes refugees to the doctor's or the RFL program, while Caritas manages the food distribution. Brežice camp is now closed. This specialization has its limits, especially for volunteers involved in any of these humanitarian organizations and non-governmental organizations, as they are not able to perform tasks assigned to other associations. Some volunteers were reporting

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2   Dobova is a registration centre at the border with Croatia where refugees are registered when they enter Slovenia. Šentilj is an accommodation centre in the north of Slovenia where refugees have been kept waiting to cross to Austria.

some problems when they were exceeding the tasks attributed to the organization with which they were registered. Thus the registration of volunteers in an organization should be well thought out according to their expectations as they may become frustrated if their assigned tasks do not meet their expectations of what their tasks should involve or what they were expecting to do.

This professionalization also had the effect of reducing the needs of both foreign and Slovenian volunteers. In Opatovac in Croatia, many volunteers were feeling useless during day shifts since most of the tasks were then performed by the recruited teams, while the night shift was hard to fill because paid teams were not allowed to work during the night. Lately, many volunteers who came spontaneously were denied access to the Slovenian camps because the teams were already full and sufficient. It is unclear whether it is the lack of volunteers that led to the recruitment of local people or if it is the local recruitment which led to the reduction in the number of volunteers. Still, the number of foreign volunteers in the camps has decreased significantly since October. They are now mainly concentrated in certain services depending on the camps and the NGOs or HOs. For example, Caritas's medical tent in Dobova is operated almost exclusively by volunteer medical staff from other European countries, while the Red Cross's in Šentilj is operated only by Slovenian staff. For the RFL program, the Red Cross is working both with volunteers and employees.

Communication problems

Overall, my experience and those of other volunteers have always been fairly positive, although many points remain to be improved or reviewed. The integration of foreign volunteers into teams has always been very easy, as well as

working with local personnel, either volunteer or employed. Their good command of English, their curiosity and empathy have allowed most of the volunteers to adapt quickly to the camp and to find their place. An Italian volunteer, Tommasi, stated that

Mostly there were just Slovenian volunteers working in the camp, except for some Italian, French and Czech people. At the beginning, when working with my 'colleagues', I was always explaining that I could not understand Slovenian, but once they realized that, everybody was nice and helpful. (Interview n. 2, 2 December 2015)

This ability to speak English is unfortunately not shared by all those working in the camps. Thus, some coordinators of NGOs and HOs, many police officers and soldiers are unable to communicate neither with the foreign volunteers nor with refugees. Among the volunteers, this problem remains superficial and irrelevant, but in a crisis on a European level, it is important that police officers can communicate not only with refugees, but also with police officers from other countries (the ones sent temporarily to Slovenia or the border police). It would be useful for those in position of authority to be able to communicate without hindrance. Many logistical problems or misunderstandings could be avoided and precious time could be saved. Another problem of communication is between NGOs, HOs and foreign volunteers when they have to register online and when they receive information from the NGO per mail. As Tobias, one of the registered said:

The website for the registration as a volunteer has to be in English or at least in another language. The same goes for the messages or the mails that they send us. It is always just in the Slovene language. I could not understand what they wanted from me.

It seems that they were asking for volunteers, but I did not understand. I would have gone otherwise. (Interview n. 3, 2 December 2015)

If the relations with the other volunteers and members of the NGOs and HOs have generally been good, relations with the police and the army have not always been easy. As one volunteer stated, "the police and the army can be very helpful when we are distributing food and clothes, as they help to keep order and calm" (Interview n. 2, 2 December 2015), but relations with the police and the army can sometimes hinder the work of volunteers, and may even become problematic when their attitude with refugees is not adapted. Tommasi complains of the behaviour of the police and the army:

The atmosphere in the camp was changing day by day and depended on who was in charge at the moment. In some circumstances, the police were acting normally. For instance, when the BBC came to the camp to interview us, the Austrian and Slovenian army were together smiling and happy. On the other hand, there were lots of situations which showed how the authorities (police and army) were unprepared for the humanitarian situation. They were seeing the refugees as a burden of which to get rid of quickly. Shoving, kicking and screaming, even aimed at families and kids. I was trying to stay calm and trying to defuse the situation as best I could. They were sometimes even acting arrogant towards us. I feel sometimes that they were looking at me and commenting negatively on what I was doing. It does not help to be on good terms and to work together. (Interview n. 2, 2 December 2015)

These mood changes are a variable that many volunteers have struggled with when adapting to the rules in the camp, as these became arbitrary and changeable according to the personalities of the policemen that we were facing.

Limitation of the volunteer work

Regarding the human element of the volunteers' experience, working with refugees was appreciated but sometimes limited. Limited in the sense that some volunteers confined to cleaning duties have felt frustrated for not being able to communicate with the refugees or provide them with direct assistance. For Christian, it was

what I miss the most. I understand that it is necessary to clean and prepare the tents, but I do not want to do this all the time. When I came here, I was also hoping to help people and to talk with them directly. It is true that I am frustrated about my mission and I do not know if I will come again to lend a hand. (Interview n. 5, 6 December 2015)

For Katja, the problem is "that I could not talk freely to people because of the different barriers and could not go everywhere". The same for Tobias, who did not like "the distance between volunteers and refugees. In this way, they cannot feel the human touch, they cannot feel welcome here in Europe". Other limitations for volunteers include often not being able to provide information on the waiting time in the camps, on the next destination for the refugees or on the asylum procedures in Slovenia and other EU countries. As Tommasi emphasized,

We need to have more volunteers in contact with refugees in the camp, trying not to leave them completely alone in the tents with no information. The other problem is that I did not have any information to give to the refugees if they asked me. Nobody could inform me about it. If I asked the NGOs or the police, they often told me that they do not know it either. It creates a kind of nervous atmosphere inside the camp because refugees are lost. (Interview n. 2, 2 December 2015)

Basic formation on legal issues for the volunteers, or at least a document with legal information available in every tent would be a valuable improvement for the reception of refugees.

Reconsidering the volunteers' experience

In order to improve the integration of foreign volunteers in the activities of the camps, it seems important to ensure an understanding of the purpose of the tasks attributed. Understanding what we do and why is important for the volunteers. For some volunteers, it would be important that volunteers were more included and consulted in order to see which activities could be executed or adopted to meet the refugees' demands in the camps, for example, info-points or a space for children. For Tobias,

A way to better exploit the potential of every volunteer would be to meet them, to be able to debate. But if the volunteers spend just two or three days in the camp, the only way is to stay under the governance of forces. (Interview n. 3, 2 December 2015)

If it is desired that volunteers stay and engage for a longer period, accommodation facilities should be provided so that they can have a separate place to rest when they are not engaged in the work at the camp. The winter period has certainly played an important role in the decline of the number of volunteers as the possibilities for accommodation are reduced and become more expensive. In fact, many volunteers were sleeping in tents, which is not possible anymore. A shuttle system should also be implemented in order to connect the major cities to the camps. In Croatia, shuttle buses provide transportation for volunteers from the town centres to the camps. After each shift change, a new team is brought in and the one that just finished its services is driven back, allowing those who do not have a car (which is the case for many foreign volunteers) to travel easily to their workplace. This entire process is obviously based on the desire to develop a network of volunteers invested in the long term. It seems that the NGOs and HOs have instead decided to recruit local staff and rely on the few arrivals of foreign volunteers. The ability to involve volunteers in decision-making also faces more general problems. Except from the fact that foreign volunteers' stay in Slovenian camps remains brief, we also have to see how the authorities, NGOs and HOs conceive the camps. The latter have gradually defined the roles of each NGO and HO in the camps, claiming their control and responsibilities on the humanitarian activities. Therefore, the volunteer initiatives are limited as NGOs and HOs seem to refuse to grant privileges to other groups or associations. It should also be understood how the camps are managed by the authorities. As security remains the prime concern, the humanitarian aspect has not necessarily assumed a prominent role. In fact, reception centres are set up in order to register the refugees before they are sent to accommodation centres where they are to remain only until Austria opens its borders. These camps are designed to channel refugees to Austria as effectively and quickly as possible, the role of NGOs and HOs being minimized to meet the basic needs of the refugees. This approach is in great contradiction with the motivation of most foreign volunteers who come to help. In fact, most of the volunteers I met are often greatly valuing their actions and refuse to reduce them to a subsistence support, and are instead aiming to also be helpful in the area of psychological and emotional support by talking and listening to the stories and the problems of the refugees. This gap between expectations and reality can create frustration among these volunteers who do not find themselves fully satisfied by the tasks they have to perform and who could feel limited in their interactions with refugees.

Conclusion

After two months of operations, the NGOs in the camps have slowly professionalized their teams and tried to recruit locally whenever possible. Consequently, the need for volunteers has been substantially reduced, and although they have always been well integrated, the number of foreign volunteers has declined significantly. With the decrease of refugees, the needs are even lower today. However, the possibility of the crisis resuming when the weather improves is high and they will have to rely once more on the volunteers from abroad, predominantly in the medical sector. Therefore, a review of the policies regarding volunteers would be vital, by ensuring accommodation facilities, a transportation system and especially to also include English in the communication process, in addition to Slovenian. Foreign volunteers have high expectations regarding their tasks and the help that they could bring to the refugees in the camps, probably even more so than the paid employees. It would be beneficial to listen to volunteers in order to develop activities that could benefit refugees (activities with children, info-points, a women's area). With these improvements, NGOs and HOs could take full advantage of volunteers and would enable a more pleasant transit for the refugees, without conflicting with the authorities' security approach.

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Legal Implications of the "Humanitarian Corridor"

Neža Kogovšek Šalamon

ABSTRACT

This chapter addresses the gaps between law and state practice in managing mass migration movements. It focuses on the right to entry, the rights of transit and detention issues, showing that state practices in this field are outside the normative framework which governs the aforementioned areas. It points at new emerging rights that are being formed from state practice that is carried out outside of the legal framework, producing new rules of customary international law applicable for people who are entering the state irregularly within mass migration movements. The chapter analyzes the "corridor" which presently facilitates the migration route used for transferring people to their desired country of destination. The chapter concludes that the law is not responding adequately to the needs of people involved in mass migration movements, and stresses that in order to maintain a state governed by the rule of law, the law should respond adequately to these needs.

Keywords:

Refugees, refugee crisis, corridor, asylum law, Slovenia, European Union, Schengen area

INTRODUCTION

In September 2015, the Republic of Slovenia saw an unprecedented increase of arrivals of refugees and migrants. The state became one of the countries on the so-called "Western Balkans migration route", used by the enormous numbers of Syrians, Afghanis, Iraqis, Pakistanis and other nationalities whose goal was to reach Western Europe. During this process, migrants and refugees perceived Slovenia exclusively as a transit country where they did not wish to apply for asylum. The initial plan of the Republic of Slovenia was to strictly abide by the law of the European Union and the national law in the field of asylum, migration and border control. This means that Slovenia, being a member of the Schengen area, planned to reject entry to all people who would attempt to enter the state without valid documents,

Dobova, 13 November 2015

The majority of refugees arrived to Dobova by train, which became the main entry point. Once arriving to Dobova train station, the refugees are either registered there and continue their way towards Austria on the next train, or are taken to Dobova or some other reception centre by bus. The reception centres are under police supervision, however, there is also a heavy military presence at some locations which gives an impression of an "emergency security situation". At the back there is a large white tent, a part of which is used as a warehouse by the Red Cross, while the other part is a waiting area for refugees. From this tent the refugees only have access to a few toilets and no running water.

as required under Article 7 of the Aliens Act. If they entered irregularly and would not apply for asylum, the state planned to (attempt to) return them by sending a request to the Republic of Croatia (or another state where the people entered from) first informally and them formally, as provided for by the readmission agreement signed with Croatia. If readmission was not possible, the police planned to "accommodate" the person in the Aliens Centre in line with Article 76 of the Aliens Act. If the person applied for asylum, he or she would be escorted to the Asylum Centre in order to lodge an asylum request and reside there while waiting for the decision of the asylum authorities in line with the International Protection Act. This is the act with which the Republic of Slovenia transposed the key asylum directives and regulations, such as the Reception Conditions Directive, Qualification Directive, and Asylum Procedures Directive.

The reality was very different from the plan. The first big group arrived in Slovenia by train, which was sent to Slovenia by the Croatian authorities after Hungary closed its borders with Croatia. At the border check, the Slovenian police found that the majority of the passengers did not possess valid travel documents or permits to enter the country. The Slovenian authorities requested Croatia to accept them back, as provided by the readmission agreement, but the Croatian police refused to do so. This was the key turning point when the Slovenian authorities realized that acting in line with the "business as usual" principle would not be possible. The high numbers of arrivals simply did not permit for that. The existing EU and national rules were not designed for mass arrivals and did not provide for an appropriate basis that the authorities could use in dealing with the situation. Consequently, a parallel regime in a form of a *de facto* "corridor" was set up by way of improvised measures used by the

authorities in this process. This corridor consisted of: basic and quite minimal reception conditions for people arriving in an organized way from the Republic of Croatia, basic identification and registration procedure, and free transfer organized by the authorities to the borders with the Republic of Austria. People within the corridor are not allowed to move freely and have a limited contact with the outside world. Status-wise there are three groups of people in the corridor: asylum seekers actually applying for asylum, *prima facie* refugees[1] not applying for asylum (relevant from the perspective of the Geneva Convention), and people who are not *prima facie* refugees and are not applying for asylum. Some policy makers call the latter group "economic migrants" (Ministry of Interior, 2015).

This chapter examines how the corridor corresponds to the EU rules, how the EU law responds to the situation and whether it is the EU law that is supposed to provide an answer to the challenge. In the context of the current migration flows, EU member states hold different positions: some are predominantly countries of transit while others are destination countries. Slovenia falls into the first category as only a small number of people crossing the Croatian and Slovenian border irregularly (but in an organized way) are applying for asylum.

Is there a right of entry in the EU law?

The first question that pops up in a situation involving thousands of people (who would never be allowed to enter in the past) entering the country on a daily basis is whether there is a right to enter the territory defined in the EU law. The answer is negative. Under the pro-

visions of Article 5.1 of the Schengen Borders Code there is no right of entry of third country nationals as such. Entry rights are subjected to conditions, such as possession of a travel document, a valid visa, a residence permit and similar. At the same time, thousands of people who do not meet these requirements are entering the Schengen area. This is clearly the result of the urgency of the situation faced by states due to mass migration: the states have no choice but to accept the people since, as already mentioned, the states situated on the transit route before them will not accept them back. Consequently, allowing entry is the only thing the states can do to respect basic human rights standards, particularly Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), which prohibits inhuman and degrading treatment. If people were refused entry while the neighbouring country would refuse to accept them back people would be stranded in the territory between the two states. If none of the two states accepted responsibility to provide for basic care, they could both be found liable for violating Article 3 of ECHR. This discussion indicates that there is something called *emerging entry rights* of irregular migrants – the rights of entry which become executable when necessity forces the states to allow entry in order to abide by basic human rights standards.

This is evident from the developments at all border crossings along the Western Balkans migration route which currently (in December 2015) goes through Greece, Macedonia, Serbia, Croatia, Slovenia, Austria and Germany. In addition to Slovenia, Greece is another country on this route where people are entering the Schengen area. If Greece (or other countries) did not grant entry rights into the Schengen area in the situation of mass arrivals people would be – and have been – dying in their masses at sea which does not only raise questions with regard to Article 3, but also Article 2 of ECHR that protects the right to life. This shows that mass arrivals change everything. When the

states have been faced with arrivals of individuals or small groups many of these questions were not raised, primarily because a country where people entered from was usually willing to receive the returned individuals and provide for them in line with their asylum and migration law provisions. Mass arrivals seem to encourage the emergence of new rights of migrants, similar to those already recognized for refugees who need to be granted access to territory in order to exercise the rights enshrined in the Geneva Convention. The difference is that these emerging entry rights are now apparently applicable also to irregular/undocumented migrants (in mass migration movements) who do not apply for asylum.

Is there the right of transit in the EU law?

The second question that arises from the current *de facto* corridor is whether there is a right of transit. The countries on the mass migration route are either effectively allowing transit by "turning a blind eye" on people who (may) choose to travel on their own (Macedonia, Serbia) or organizing transit for people travelling within the corridor, as in cases of Austria, Croatia and Slovenia. In the EU law the right of transit for third country nationals who do not have entry rights is not defined. Transit rights are defined, for example, in the context of airports where passengers stay in the transit zone and do not actually enter the state territory through a border crossing (Article 2.1.3 of the Schengen Borders Code), or in the context of people who have residence permits or visas in one EU member state, but in order to get there they need to transit another EU member state (Article 5.4 (a) of the Schengen Borders Code). The current situation when people who do not meet the requirements for entry are allowed transit or are even actively transited by the member states, is outside the law and is not foreseen by the latter. As a consequence,

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1   *Prima facie* refugees are people fleeing mass human rights violations or war zones in numbers that authorized officials cannot process, while at the same time the serious circumstances in their country of origin they are fleeing indicate that it is very likely they would receive a refugee status if they applied for it.

similarly as in the case of entry rights, there is also an *emerging right of transit* provided that the person to whom this right is granted is part of the mass migration movement. Again, this right applies to irregular migrants. If it was asylum seekers who would exercise such "transit rights" within the Schengen Area (meaning that they would wish to move to another EU member state), they would most likely be subject to a return procedure based on the Dublin regulation to the country where they first lodged an asylum application. Transit rights are therefore emerging in relation to irregular migrants only. What is interesting is that the authorities are actually trying to legalize the right of transit. They use different methods to do this. A method that Slovenia is using (not very regularly though) is issuing a "permission to remain" (*dovoljenje za zadrževanje*) based on Article 73 of the Aliens Act. This permission which is valid for six months does not allow an individual to reside in the country (it is not a residence permit) but only allows them to stay and protects them from expulsion in line with the principle of non-refoulement and grants them the right to basic care.[2] The state is issuing these permits to refugees in spite of the fact that its only intention is to transport the refugees up north as early as possible. In fact it is neither in the state's nor in the refugees' interest for the latter to stay in Slovenia for weeks or months. It is therefore questionable whether issuing permissions to stay is in line with the law at all. Namely, Article 73 of the Aliens Act does not foresee issuing permissions to stay to people whom the state plans to transport to Austria in a few hours or days. Instead the mechanism is intended for people whose return is not possible for various reasons and for whom it is likely to expect that they will stay in Slovenia for a while, without having any

kind of other legal status (e.g. that of asylum seeker, resident etc.). Arguably, issuing permissions to remain in this situation is not in line with the law. It is interesting to note that on 7 January 2016 the Government of Slovenia declared that permissions to remain issued to refugees cannot be regarded as residence permits in line with Article 12 of the Dublin Regulation, thereby trying to exclude its responsibility for examining asylum applications lodged in other EU member states (Government of the Republic of Slovenia, 2016). In line with the national legal theory permissions to remain have always been regarded only as mechanisms for the protection of a person from expulsion (Rakočević, 1999: 136). However, it remains to be seen whether they can be regarded as "residence documents" as defined in Article 2(l) of the Dublin Regulation which reads:

'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for inter national protection or an application for a residence permit;

In my view permission to remain does not fall in this category: it does not authorize a person to stay on the territory of Slovenia as it is neither a residence title nor an entry title as it ceases to be valid when

the person leaves the territory of Slovenia. It is also not a document authorizing a person to remain on the territory under temporary protection, a specific mechanism that can be – but it has not been – introduced under the Temporary Protection Directive. Lastly, it is also not a document substantiating the authorization to remain until the circumstances preventing the removal order from being carried out – as the removal order has never been issued to the people in the "corridor".

The states apply the described treatment only in relation to migrants who are part of the corridor, which includes all migrants who arrived to the country in a certain state-organized way (usually by train or bus), who were accommodated in the facilities set up by the state for their registration and accommodation, and who left the state in a way as agreed by the next receiving state and the sending state. To any other irregular migrant who attempted to access the state territory at the same time as the people in the "corridor", but individually at other border crossing points than those agreed by the two states, entry was not allowed. In such individual cases the EU rules are strictly applied and such individuals are denied entry. The only way they can enter the state is if they report to the authorities and try to join the corridor. Once they are part of the mass movement, their right to entry and transit are in principle granted to them.

These conclusions are based on the observation of the actual state practice which is interesting in the context of how customary international law norms are created. The described state practice is paving the way on how similar situations could be handled in the future. These examples cannot be ignored in cases of similar future developments, especially since they are based on the most

fundamental principles of international human rights law. The methods that the states are using are a result of the requirements imposed on states by human rights treaties. This indicates that a certain binding nature of emerging entry and transit rights exists which points at the possibility of the creation of new norms of customary international law in this field.

The whole discussion is only relevant to the extent that the majority of people who are part of the "corridor" are not applying for asylum in the countries they are transiting. If they were applying for asylum their legal status would be completely different. First of all, there would be no discussion on emerging entry rights as asylum seekers already have, at least in theory,[3] the right to access the territory. Second, as already indicated, there would also not be any right of transit due to the rules set up under the Dublin system that addresses multiple asylum applications. Further, applying for asylum also renders a person eligible for reception conditions defined by the Reception Conditions Directive, which is something that irregular migrants do not have access to. Irregular migrants do not enjoy the protection of a similar source of law that would define their reception rights in detail. The only guidance that the country can (and has to) rely on can be found in ECHR and other international law sources, such as the International Covenant on Economic, Social and Cultural Rights, which in Article 11 obliges member states to secure the right to an adequate standard of living, including adequate food, clothing and housing. This obligation certainly applies to irregular migrants under the state jurisdiction and presents a certain safeguard in the absence of other more concrete provisions that would be in place specifically for irregular migrants.

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2   Other countries on the Western Balkans migration route use other methods, such as the instrument of "intention to apply for asylum". For example, when a person reaches Serbia, they stop at the police station and express the intention to apply for asylum. The police issue them a document by which people are obliged to report to a reception centre in 72 hours. Since they are not escorted to the centres but are permitted to go their using their own means, almost all of them continue their journey toward Croatia. (Belgrade Centre for Human Rights, 2015) This means that the instrument of the intention to apply for asylum in fact functions as a transit permit.

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3   In practice it is evident that more and more countries are avoiding their responsibility to grant access to territory and examine asylum requests filed under their jurisdiction. See Guild and Moreno-Lax (2013).

Co-existence of the normative framework and state practice that divert from law

The above discussion indicates that a certain parallelity of several systems exists. First, we can observe the parallelity of the legal system generally in place (EU and national rules on border control and migration management) and a de facto "corridor" that emerged as the actual state practice that is not foreseen or regulated by law. In spite of the extreme differences between the two regimes, they seem to perfectly coexist and no one seems to be bothered by this.

Second, there are two parallel systems of treatment that irregular migrants are experiencing depending on whether they are part of the state-managed corridor or they are traveling individually or in smaller groups outside the corridor. The treatment of both groups is completely opposite. One is in line with the rules governing migration and border control, the other is not foreseen in those rules but is a result of necessity caused by mass migration movements in which the states may only rely on guiding principles of international law. As we can see from the practice of the Slovenian authorities, states are trying to resort to instruments they have at their disposal to legalize their practice at least to some extent, thereby trying to link the situation with the normative framework.

A third example of the parallelity of systems comes from the comparison between the visa system and the "corridor". A third country national who wishes to enter any of the states on the Western Balkan route via common procedures would have to apply for a visa at the nearest consular representation office. In order to do that, they would have to present a number of documents proving their identity and the purpose of their travel. If they were nationals of any of the

countries that are most represented in the current mass migration movement, their visa application would probably be rejected. However, if they decide to embark on a lengthy, costly and dangerous irregular migration route to Europe using a *de facto* "corridor", they would be most likely admitted to the state which would otherwise not even issue them with a visa. It seems that at the moment the corridor is the most optimal choice to reach Europe than the legal channels provided for this purposes. This makes it rather appealing.

Fourth, a certain parallelity can also be observed in the existence of the corridor which enables a fast, state managed travel of refugees and migrants towards the West, while at the same time most of the countries on migration route are tightening their asylum and migration systems: they are re-introducing border controls, amending their legislation by passing stricter rules of procedure and reception conditions and setting up fences. The contrast between these policy restrictions and the facilitation of travel of the people in the "corridor" is unprecedented and it seems that it will not last forever. The restriction of state policies leads to only one goal – abolishing the "corridor", closing the gates. The only question that remains unanswered is – when. For Slovenia the answer is quite predictable: the corridor will exist as long as Austria will continue to receive people. At the moment when this ceases to be the case the authorities will close the gates the same way as Hungary did. At that time the razor wire fence set up to "direct the refugees to entry points" will start to perform its function, while the more restrictive legislation will function as an additional deterring element of the Slovenian asylum system.

Freedom of movement

Refugees and migrants who transit Slovenia in the "corridor" are not allowed to move freely within the state territory. Their travel and stay is fully managed

by the state structures that run registration and accommodation centres and organize train and bus transport. As mentioned, people in the corridor are not applying for asylum in Slovenia, which means that their legal status is reduced to a non-status of irregular migrants. Some of them are issued permission papers to remain in the country, while others are not, as described above. This raises the issue of the justifiability of the measure of movement limitation: is it in line with national and EU law?

According to Article 15 (1) of the Return Directive, member states may "only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process". The provision specifically states that detention is justified "unless other sufficient but less coercive measures can be applied effectively in a specific case". The provisions further states that detention is allowed "in particular when (a) there is a risk of absconding or (b) the third-country national concerned avoids or hampers the preparation of return or the removal process." The provision completes by stating that "detention shall be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence."

These provisions clearly limit detention of third country nationals who are irregularly entering and staying in the state territory with the "purpose of return". The "purpose of return" is therefore *conditio sine qua non* for exercising detention, meaning that detention is not justified by the EU law if it is exercised for other purposes that are not related to the return of the aforementioned types of migrants. Blank justifications such as public safety or the wish of the state to exercise control over irregular migrants as such are not legally valid reasons for detention.

In the Slovenian case, from October to December detention was imposed on all irregular migrants in

the "corridor" as their freedom of movement was in fact limited: they were obliged to stay in the premises (mostly fenced areas and tents) specifically designated for them by the state, they were obliged to use the means of transport when and where it was provided for them by the police, they had limited contact with the outside world, and they were not allowed to leave the fenced area, except in cases of justified medical emergency, when medical personnel and the police authorized their transfer to the hospital. At the same time it was obvious that detention of these people was not exercised for the purposes of return. The return to Croatia where people were entering from was not carried out as already described and return was in fact not possible. If it was not possible, then the main requirement that needed to be fulfilled for detention was not met. Accordingly, the detention of people within the corridor could not be considered to be in line with the Return Directive.

Further, according to Article 15 (2) of the Return Directive, detention "shall be ordered by administrative or judicial authorities. Detention shall be ordered in writing with reasons being given in fact and in law." In case of irregular migrants within the corridor in Slovenia, detention was not ordered by administrative or judicial authorities, and it was certainly not ordered in writing. It was in fact not ordered at all, it was just exercised, outside of provisions with which detention is regulated in the legal framework. As mentioned, for some time people in the "corridor" have been issued with a permission to remain. However, in practice there was no difference between the treatment of people who received permission to remain and those who did not. Everyone was kept detained regardless of whether they were issued with this document or not. This shows that issuing the permission to remain had very little practical value in the sphere of personal freedom while its legal value has already been discussed above in the context of the emerging transit rights. The document certainly does not grant a person to leave the closed areas.

Detention can also be examined from the perspective of Article 5.1.f of ECHR, according to which states are allowed to carry out "the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition". In the case of people in the "corridor", it is clear that by detaining them, the authorities were not preventing unauthorized entry – the entry has already taken place. Following the agreement between Croatia and Slovenia people are actively received by the Slovenian state in an organized and structured way. Claiming that exercising detention in order to prevent unauthorized entry would therefore be in logical contradiction with the facts. Also, the question is whether we can still really speak about "unauthorized" entry if people are entering the state within the regulatory agreement between the two countries. Legally speaking, such entry of people in the corridor may be considered unauthorized, however, in practice it is undoubtedly authorized. The second case in which detention of irregular migrants is allowed under Article 5.1.f of ECHR is deportation, similarly as under the Return Directive. Since it is clear that in the case of people in the "corridor" detention was not carried out with the purpose of deportation, but with a clear purpose to enable people to travel further north, detention cannot be justified using Article 5.1.f of ECHR.

The detention of people within the "corridor" exercised by the Slovenian authorities is therefore not in line with EU law or with the Council of Europe law. Is it at least in line with the national law? This type of detention was not the one that is legally regulated in the Aliens Act. The Aliens Act regulates detention ordered by the police, by issuing a written decision, for a maximum period of six months (Article 76 and 78 of the Aliens Act). In the case of limitation of movement of people

in the "corridor" no decisions on detention were issued. Consequently, the detention of people within the "corridor" was either not in line with the Aliens Act or it was not a type of detention foreseen by the Aliens Act. Therefore, what kind of detention was at stake here? Another source of national law that could be used to justify this measure is the State Border Control Act. According to Article 32 of this act, the police may "hold" a person who intends to cross or has already crossed the border line in an irregular way. In this case "to hold" means to prevent the person from continuing their journey and amounts to a de facto limitation of movement. Such limitation of movement may, according to Article 32, para. 1, only last for up to 48 hours and may only be exercised with the purpose of "establishing facts and circumstances of crossing the state border or with the purpose of rejecting entry of a foreigner who does not meet the conditions for entry and for justified reasons cannot be deported right away". Further, if such limitation of movement lasts for six hours or more, the police have to issue a reasoned written decision to the person concerned (Article 32, para. 3). Since written decisions were not issued to people in the "corridor" whose movement and personal freedom were effectively limited, it can be concluded that this detention is not the type of detention foreseen by the State Border Control Act. This means that detention imposed on people in the corridor was, in the same way as the "corridor" as such, outside the law. The authorities are therefore not responding by using the law, but by applying practical measures that have no legal basis. The fact that the limitation of movement of people within the corridor lasts only for a few days – from the moment when people enter Slovenia to the moment they exit to Austria – does not exclude the responsibility of the state to comply with national and international law. The fact that only a few hours of the limitation of movement need

to be legally justified is visible from Article 32 of the State Border Control Act, which requires the police to issue a written decision after a six hour period of holding a foreigner who has entered irregularly. In the case of de facto limitation of movement imposed on irregular migrants there is clearly a gap between the law and practice which requires urgent attention. If the states, including the Republic of Slovenia, pride themselves with being governed by the rule of law, such practices, especially if they affect masses of people, have to either be abolished or legalized.

The status of Dublin III and the Eurodac Directive

The last legal issue from the realm of EU law addressed in this chapter is related to the Dublin Regulation (Dublin III) and the possible returns to Slovenia based on this regulation. As described by Ladić and Vučko in this volume, fingerprints are occasionally taken from people in the "corridor", but they are not entered into the Eurodac system. The Eurodac system was established by the Eurodac Directive which serves as the tool assisting in determination of the member state responsible for examining the asylum application. According to Article 9.1 of the directive, the member states are obliged to take fingerprints of all fingers of every applicant for international protection of at least 14 years of age and transmit them to the central system in 72 hours. Since people travelling through Slovenia via the migration "corridor" are not applying for asylum, the fingerprints taken by the Slovenian authorities do not have to be transmitted to the central system. In practice, this provision is respected and fingerprints taken by the Slovenian police are kept only in a local state database.

Member states are not only obliged to take and transmit fingerprints from applicants for international protection. According to Article 14.1 of the Eurodac Directive, member states are obliged to

take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.

The wording of this provision shows that the article is not applicable for the green border of Slovenia whose geographical neighbours are all EU member states while none is a third country. This means that under this provision of the Eurodac Directive Slovenia is not obliged to take and transmit fingerprints of people who are entering its territory from Croatia. Consequently, returns to Slovenia from for example Germany or Austria based on Dublin regulation and Eurodac Directive will not be possible. They would only be possible through an agreement based on quotas or readmission agreements.

Neža

Legal

Conclusions

Responding to the questions from the introduction in this paper (how is the law answering the needs and is the law the answer to the needs?), we can first conclude that the law is not adequately responding to the needs raised by mass migration movements. Neither national law nor the EU law were passed for such mass migration movements. As a consequence, the measures used by the authorities are not in line with the law and are not foreseen by the law which creates further problems with the lack of guarantees that the people affected by these measures have at their disposal. For example, if detention practices are not regulated by law, there are no complaint mechanisms that people who are affected by detention could use. Further, there is a problem of the lack of legality of these detention practices which is in contradiction with the constitutional principle according to which all state measures have to have a legal basis – the principle of legality. The fact that the state is dealing with a mass migration movement and that it is operating in extremely logistically difficult circumstances which amount to a humanitarian crisis does not exclude its responsibility for the respect of international, EU and national law. While the law is apparently not appropriately responding to the needs of people who are part of these mass migration movements, the authorities are also not responding appropriately as they are using the law in an inadequate way. This brings us to the answer to the second question we posed in the title of this paper; whether the law is the answer to the needs. The response is yes, but not exclusively. It is first on the elected representatives and on the state government to decide what kind of policies they will exercise and then pass appropriate legislation. The law should therefore be taken as a tool for managing mass migration flows, while at the same time as a tool for maintaining the rule of law and respect for international human rights standards. However, in order to serve this function, the practice and the law have to be brought in line – either to change the practice or to change the law, while at the same time in all cases taking into account the minimum standards set on the level of the Constitution of the Republic of Slovenia and on the international level. These two levels already enshrine humanity, solidarity and human dignity of every individual which should be fully respected in the ways and manners in which refugees are treated in their pursuit of better life prospects.

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Anti-Immigration Hate Speech in Slovenia

Veronika Bajt

ABSTRACT

Across Europe, a rise in hate speech against migrants and Muslims is apparent, especially in relation to the current "refugee crisis". Islam in Slovenia is the second largest religion after Catholicism, yet the perception of Muslims as the vilified Other remains racialized, gendered and burdened by orientalist misconceptions just as is generally the case in the "West". Focusing on anti-immigrant hate speech, this chapter has two goals: it sets out to overview the most current developments subsumed under the so-called debate on hate speech in Slovenia, while seeking to answer the question of how best to address the rising racist anti-immigration and anti-Muslim attitudes. Since Slovenia faces a lack of mechanisms for the prosecution of hate speech, a number of civil society actors have lately taken up the initiative to act.

Keywords:

Hate speech, Slovenia, "refugee crisis", anti-Muslim prejudice, Facebook, "Zlovenija"

INTRODUCTION

The January 2015 attack on Charlie Hebdo offices and the November 2015 attacks in Paris increased fear and rhetoric of insecurity across Europe. A rise in hate speech against migrants and Muslims was noted, whereas in Germany, for instance, anti-refugee attacks rose four-fold compared to 2014. Moreover, in the fall of 2015 Europe was finally faced with what North-African and Middle-Eastern countries have been experiencing for years: the arrival of pronounced numbers of refugees, who braved the extreme hardship and uncertainty of the so-called Western Balkans migratory route. What has quickly been mistermed as "refugee crisis" – since it is factually a crisis of the European Union and a crisis of the nation-states' response – has additionally increased intolerance and hate speech that spread particularly fast over online social media. Reactions to this obvious intensification of hateful online commentary in EU member states, however, were not uniform. While France opted for a crack-down on Facebook hate sites, other countries seem to have preferred a much more conservative response; one much more

Brežice, 27 October 2015

The reception centre in Brežice, which is now closed, can be highlighted as an example of a centre with the worst conditions in Slovenia. People (among them many children and babies) were forced to wait outside in an empty, fenced, muddy area despite very cold or rainy weather, including at night, often without access to food, clothes, blankets and toilets. To warm up, people made fires by burning wood, blankets, plastic and other trash. The smell was terrible, the air was smoky and it was difficult to breathe.

in line with the United States' dictum of freedom of speech. Moreover, several European governments have themselves exhibited racist anti-refugee and anti-Muslim reactions, especially among Central-Eastern (CEE) post-communist countries.

Whereas Slovenia shifted its stance from voluntary to mandatory acceptance of refugee quota among member states, the Czech, Hungarian, and Slovak governments opposed the European Commission's plans to redistribute refugees throughout the EU, causing a major rift inside the union. Hungary and Slovakia even filed lawsuits in case of mandatory obligation to accept refugees on their territory. Poland, previously also against the sharing of the quota, has reluctantly changed its mind and is now to accept its share of refugees, and was also recently joined by Slovakia. Yet the arriving refugees are to be only Christians, which clearly points to further aggravation of integration prospects for the newly arriving people in CEE who might ascribe to Islam. Poland, for example, was the last EU country to pass an Equal Treatment Law in 2010. With weak integration policies, Slovakia's and Hungary's anti-immigrant sentiment surpasses the EU average. According to the June Eurobarometer survey (European Commission, 2015), nearly 40% of Europeans cite immigration as the issue of most concern facing the EU (just a year ago only 25%). Immigration of people from outside the EU evokes a negative feeling for 56%; most strikingly negative are attitudes in the Czech Republic (81%), Latvia (78%), Greece (78%) and Slovakia (77%). At the same time, most Europeans greatly overestimate the proportion of their country's actual migrant population (ECRE, 2013; cf. IPSOS, 2015), so it is no wonder that the "refugee crisis" has now additionally affected the voters to shift toward far-right, nationalist parties (e.g. in Poland and Hungary).

Yet are we witnessing an actual divide within Europe or are the recent events and anti-immigration attitudes in CEE, including Slovenia, a reflection of the wider collapse of EU migration, integration and asylum policies? Moreover, is hate speech not a direct reflection of how political actors treat migrants? This chapter argues that it is necessary to address the production of racist policies and the discriminatory treatment of migrants as the key instigators of hate speech.[1] It does so by way of illustrating hate speech against refugees as observed in Slovenia in the latter third of the year 2015. Slovenia is no exception in the world where no state is "free" from intolerance and hate speech, in this sense being comparable to the extremist developments in the "West" (Kuzmanić, 2003). As an independent state since 1991, but also previously as one of Yugoslavia's socialist republics, Slovenia has not been immune to xenophobic, racist, nationalistic, sexist, homophobic, and other exclusionary discourses, as well as practices. There had been at least two previous periods of more profound anti-immigrant sentiment: already in the 1990s, echoing the break-up of Yugoslavia and the armed conflicts that resulted in Slovenia facing thousands of refugees, mostly from Bosnia and Herzegovina, and again around 2001, when asylum seekers and irregular migrants from countries outside Europe – e.g. Iraq, Iran, China, Sierra Leone (Pajnik et al., 2001) – were placed in asylum centres, which stirred reactions of moral panic and opposition from the local population (cf. Jalušič, 2001; Pajnik, 2007; Kralj, 2008). The recent developments form the third cluster, certainly the biggest and most overarching of the three temporal cases. Focusing on anti-immigrant hate speech, this chapter therefore has two goals: it sets out to overview the most current developments subsumed under the so-called debate on hate speech in Slovenia, while seeking to answer the question of how best to address the rising racist anti-immigration and anti-Muslim attitudes.

The Muslims as the quintessential Other

Islam in Slovenia is the second largest religion after Catholicism, yet the perception of Muslims as the Other remains racialized, gendered and burdened by orientalist misconceptions just as is generally the case in the "West". Prior to the recent "refugee crisis", the nascent anti-Muslim prejudice was slightly less apparent because the Slovenian Muslims are in majority South Slavs (like "ethnic" Slovenians), who speak mutually intelligible languages and share a common historical legacy of Yugoslavia. Their "Muslimness", as I argued elsewhere (Bajt, 2011), was hence accepted as part of their identity and tolerated as long as it remained secluded to the private sphere, while upsurges in Islamophobia were predominantly related to the building of a mosque in Ljubljana. Expectedly, anti-Muslim attitudes correspond with Islamophobia that intensifies after every terrorist attack enacted by Islamic extremists. Nevertheless, rather than being merely a response to Islamic fundamentalism, Islamophobia has a longer history in Slovenia (Dragoš, 2004), stemming from biased Eurocentric teachings of history, and exclusionary perceptions of "culture".

What CEE countries have in common, therefore, is their relatively small share of foreign-born population, small Muslim communities, and strong ethnicist understandings of their allegedly unique national identities as monocultural. The xenophobic and anti-Muslim reactions across Europe are hence just a wider context that becomes even more pronounced in a specific geopolitical reality of nationalising post-communist states. Slovenia, as one such case in point, is still a relatively young "nation-state". It lacks provisions for Muslim religious practice and is still ripe with anti-Muslim prej-udice that predominantly stems from lack of knowledge of Islam, while the factual contact and experience remains almost non-existent. As a consequence, the public debate is merely *about* the Other – *for* "Them" or *against* "Them" – but notably *without* "Them". This contributes to the gap between the majority population (i.e. the "dominant nation") as the only acceptable "Us" and "Them" as the Other where the various minorities are subsumed. It is therefore no wonder that several European governments have backtracked from commitments made to manage the "refugee crisis" (i.e. reallocation based on a quota system), resorting to the erection of more barriers, with fences already up in Hungary, Bulgaria, Slovenia, and Austria.

The annual report of the European Commission against Racism and Intolerance identified as main trends in 2014 a dramatic increase in antisemitism, Islamophobia, online hate speech and xenophobic political discourse (ECRI, 2015). In October 2015, Marine Le Pen, the leader of France's far-right Front National, went on trial charged with anti-Muslim hate speech.[2] Even though she was eventually acquitted, the fact that hate speech was prosecuted in France resonated in Slovenia, where several public calls to the authorities were made by the media, academia and civil society to react in a similar manner.

Since August 2015, the number of anti-migration commentaries seemed to be spreading faster than ever before over social media, such as Twitter and Facebook. In an attempt at curbing such blatant warmongering, individuals started reporting as hate speech various newly established Facebook groups, such as "Slovenia Guard Your Borders" (*Slovenija Zavaruj Meje*), "Radical Ljubljana" (*Radikalna Ljubljana*), "STOP Migrants to Slovenia" (*STOP migrantom v Slovenijo*) or "Slovenian Militia" (*Slovenska milica*). Apart from

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[1]   Due to space limitations, the chapter purposefully refrains from an elaboration on the definition of hate speech, which remains a contested issue across various disciplines (e.g. sociology, law, etc.). In this text I therefore specifically treat hate speech as primarily a tool of humiliation, subjugation, exclusion, discrimination and dehumanization of social groups based on their ascribed ethnicity, "race", nationality, religion, and/or "culture".

[2]   Le Pen was charged with "incitement to discrimination, violence or hatred towards a group of people on the basis of their religion" for comparing Muslims praying in the streets to the Nazi occupation in a speech during a party rally in Lyon in 2010 (Chrisafis, 2015a; 2015c).

individual reports to Facebook, which did not react due to its community standards not recognizing refugees as a vulnerable group in need of special protection, no official action was taken. Hence these public Facebook groups quickly generated up to 20.000 likes each, and over 31.000 when combined. Initially, they published photos and comments that, upon analysis, contained many elements of hate speech (Svet za odziv na sovražni govor, 2015b). Their posts most commonly consisted of nationalistic, xenophobic, homophobic messages, and spread fear of and hatred towards migrants, especially towards Muslims and Islam. When faced with Facebook reports and eventually also public reactions, the online groups changed their rhetoric to a more subdued cultural racism that cannot be detected by Facebook online parameters that search for hate groups based on visibly recognizable racist symbols and language. The groups' moderators even started warning against the use of hate speech, pointing out that "comments expressing opinion in an inappropriate way" will be deleted (ibid.). Yet despite the *pro forma* proclamations of the administrators that these groups do not support violence and hatred, the actual posts and comments revealed extremely exclusionary nationalist, racist and Islamophobic views. At the same time, research has confirmed that contemporary racism and anti-immigrant prejudice are frequently disguised in allegedly patriotic safeguarding of the homeland, protection of the nation, "our" language, culture, women. As such, when accused of hate speech and spreading racist intolerance, the standard reaction is that the Slovenian nation is the one under threat and thus in dire need of protection from the Other (e.g. the Muslims, the immigrants). In effect, such Facebook groups predominantly call for integration of "Us, Europeans" to preserve "our own identity", which they see as being threatened by the "mass immigration from Africa and Asia, the spread of Islam in Europe, the systematic rape of 'our daughters' or attack on 'our families'" (ibid.).

The visual materials and messages of these Facebook groups disseminated hostility, rejected the idea of co-existence, equating refugees with Islamic terrorists and presenting them as a threat to the "Slovenian nation" or "European values".[3] The comments were even more extreme, often calling for "preparation" because "our last battle has begun". Clearly evoking the historical misrepresentation of all Muslims as directly related to the Ottoman invaders, seen as zealots and associated with cruelty and lack of reason, they were feeding into the current fears of terrorism and the constant media dissemination of rhetoric on the looming extremist Islamist threat. These are clear metaphors for self-organization and mobilization against the supposedly impending threat of invasion – an invasion connected with refugees and migrants who thus become the vilified Other that need to be averted, subjugated, annihilated. Although no explicit calls to the pogrom against migrants may be publicly promoted, such rhetoric spurs the dissemination of racist prejudice, especially if one considers the multiplying effects of the Internet.

The speed of digital social media communication enables almost instantaneous sharing of all sorts of messages, but the Internet has not only enabled new forms of political action which strengthen civil society activities, it has also become a place that reproduces inequality and the spreading of populisms (Barney, 2000; Mosco, 2004). Adopting practice from other countries, since online platforms transgress national borders, also in Slovenia racist anti-immigrant visual images and short populist slogans spread like wildfire. A growing number of people across the demographic spectrum suddenly began posting calls for the annihilation of all migrants, musing about Hitler being right, and resolving that this is the only way to protect the Western Christian civilisation, Slovenia, the Slovenian nation. Research has shown, as already noted, how contemporary nationalisms and racisms routinely em-

phasize patriotism as the underlying guiding principle for discriminatory action (Bajt, 2015). Profusely emphasizing their avid patriotism, "good nationalism", and at the same time pronouncedly denouncing racist or neo-Nazi undertones, such exclusionary attitudes towards multiethnic, multiconfessional and multicultural co-existence is in fact racist hate speech. Moreover, the predominant pattern of Othering based on ethnic and religious terms is also frequently coupled with exclusionary attitudes towards the LGBT population and other minorities that are claimed to threaten the allegedly homogenous Slovenian (white) nation and the lifestyle of the "common people".

"Zlovenija" and other grassroots reactions to online hate speech

If we are to quickly overview the recent developments regarding hate speech in Slovenia, it is necessary to start with a tweet that ignited public debate in August 2015, when a journalist tweeted "Europe can easily solve immigrant crisis. With bullets" (Erlah, 2015).[4] No legal action was taken against him and he continued to enjoy sympathies of intolerant right-wing proponents of closed borders and ban on immigration. Yet it ignited the public, who thought his words were directly inciting hatred and should thus be prosecuted as a case of hate speech. Even *The Association of Journalists and Commentators*, otherwise known to support right-wing political views, deemed his comments on refugees had "crossed the line" (ZNP, 2015), and he was ostracised and stripped of a journalism award. However, this case was just one of the examples of Slovenia's authorities not reacting to online hate speech. Setting the stage for the months to come, it was merely an overture into a sprout of online xenophobia and

anti-immigrant warmongering that was to follow. To name just one more public high-profile case, a former MP and president of the currently extra-parliamentary Slovenian National Party used his Facebook profile for spreading anti-refugee messages filled with populist anti-Muslim prejudice. August and September 2015, especially when the first groups of refugees finally reached Slovenia's borders, hence saw a rapid increase of online hate speech.

Due to the fact that neither police nor the Prosecutor's Office reacted, several public appeals followed. *The Alternative Academy* (Društvo Alternativna akademija, 2015) addressed an open letter to the President of the Republic, Prime Minister and all the presidents of political parties to immediately call on the citizens to act responsibly and enact tolerance in words and actions, as well as urging the political elite to condemn all forms of growing xenophobia and racism. They stated that it was shameful that political leadership had not been able or wanted to do any of this decisively. *The Slovene Association of Journalists* (Društvo novinarjev Slovenije, 2015) also issued a public appeal for respect of humanity and dignity in public debate, as did *The Anti-Hate Speech Council* (Svet za odziv na sovražni govor, 2015a), and several other civil society actors, as well as activists and media commentators. What all these public appeals had in common was a pronounced concern that online hate speech would escalate into actual anti-refugee action and hate crime. Moreover, awareness has been growing among certain actors that the official policies would become even more stringent, antidemocratic, racist and against immigration. As discussed in more detail in other chapters of this book (see Ladić and Vučko), this has in fact been the case (e.g. amendment to the Defence Act, setting a razor-blade wire fence along Slovenia's southern border with Croatia, and in the tightening of Asylum Law).

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3   I purposefully refrain from reproducing such visual images or direct quotations.

4   See also http://www.portalplus.si/1054/kako-bi-nas-sestra-poslanke-sds-eve-irgl/ (27.12.2015).

Another interesting development was to be observed regarding online commentaries in mainstream media. Slovenia's Public Broadcaster opted for a partial shut-down of its online portal MMC, allowing public commentary only below one news item pertaining to the "refugee crisis" a day. This was not terribly efficient since it resulted in commentators migrating to the news item where comments were still possible. Certain newspapers and magazines also shut down their online forums, and eventually the biggest private television also disabled online commentary on its web portal 24ur.com. Hate speech related to the "refugee crisis" therefore also re-opened the public debate on whether or not online participation in the form of comments is in fact contributing to the enactment of active citizenship or not.

Whereas in Germany and in France it seemed that the governments were attempting to tackle hate speech by limiting online commentaries and having sit-downs with Facebook representatives to search for ways of curbing online hate speech, the authorities in Slovenia did nothing to condemn such blatantly hateful, racist, discriminatory rhetoric. It took the President of the Republic of Slovenia until November to publicly comment on hate speech. Only when specifically called upon to present his position by a direct appeal of the National Assembly, did he state:

Critical and democratic debate is necessary also on the current problem of migration and refugee crisis. The sensitivity of the topic cannot be a reason to take away each other's right to dissenting opinion. We all have to be very careful to avoid statements that could be understood as intolerant and offensive. None of us is immune to hate speech, so we must all do our best to avoid it. (Predsednik Republike Slovenije Borut Pahor, 2015)[5]

Lukewarm words without a clear message that any and all anti-refugee rhetoric is unacceptable, as was succinctly analysed by philosopher Boris Vezjak, who observed that starting with an emphasis on "critical and democratic debate" is "not a good introduction to the condemnation of hate speech". Emphasizing freedom of expression and the need for critical discussion in this context namely invites an understanding of criticism of the refugees. Rather than protecting the object of criticism – the refugees, the president is

more interested in the defence of the 'critical side' (...) affirming the right to freedom of expression, where 'different opinion' again correlates or refers to those who have qualms regarding refugees (...) and hate speech, which he set out to condemn, is evidently on the side of those who have reservations about them. (Vezjak, 2015)

This all contributed to the conception of a site called "*Zlovenija*".[6] The creators purposefully replaced the letter "S" with "Z", thus switching "SLOvenija" into "ZLOvenija" to signify that Slovenia has become full of hate (in Slovenian the word "*zlo*" means "evil"). The portal was active for a short period in October 2015, collecting and publishing a number of extremely xenophobic and racist statements regarding refugees that were posted on Facebook publicly by various "ordinary" people. A kind of wall of shame, it simply reproduced the crudest remarks about refugees, together with profile photos and names of authors. It went literally unnoticed by the wider public until the same method appeared offline when somebody in Ljubljana put up the photographs with hateful comments as posters. It therefore took seeing the words and pictures of random people printed on paper and plastered on lamp posts to finally stir up public debate on

hate speech. However, once again the debate seemed almost more preoccupied with the right to privacy of the exposed individuals than with the racist content and intent of their hateful posts.

Nevertheless, as an important spontaneous response and self-organizing reaction to the alarming lack of reaction on the side of the authorities and political actors at a point in time when racism was expanding particularly rapidly in the face of increased numbers of refugees in Slovenia, "Zlovenija" can be seen as a success. Namely, the project reached the goals of its instigators, who noted they had three aims: 1) to initiate a discussion on the issue of hate speech, 2) getting people to realize that the Internet is a public space and that their words have meaning and consequences, and 3) to condemn all intolerance and violence.[7] To reiterate, as have humanitarian and non-governmental organizations and volunteers actually been performing the work of the state by providing direct assistance and humanitarian aid to refugees, so have initiatives like "Zlovenija" taken into their own hands the prosecution of hate speech because of the passivity of the authorities. Similarly, a Calais-based French newspaper *Le Nord Littoral* has also recently taken comparable action against hate speech that was posted below its reports about Calais migrants. Publishing a series of the most offensive messages from its Facebook page, along with the names of the people who posted them, the newspaper felt the offensive comments posted on its Facebook page "had reached such extreme proportions of hate speech that it had to take a stand" (Chrisafis, 2015b).

Several (transnational) digital media and networks have enriched activism concerning human rights and migration, particularly in the last few years. Collectives such as the *Rog Social Centre* and generally the *Njetwork*

network have in Slovenia expanded the space for public awareness and action. Defining themselves in contrast to civil society organizations, networks that spread via e-mail lists and online media operate as platforms that directly engage migrants, activists, volunteers. Significantly, in 2015, the "Anti-Racist Borderless Front" (*Protirasistična fronta brez meja*) was formed which has played an important part both in terms of humanitarian aid to refugees along the Western Balkans route, as well as in taking up a political activist stance against EU policies of closed borders. Together with a number of online communities, such as "Slovenia help refugees" (*Pomagajmo beguncem*) or "Welcome" (*Dobrodošli*), and local civil society initiatives, such as "Loka, a town for all" (*Loka, mesto vseh*), their role in countering (online) hate speech has also proven vital.

Addressing the problem of hate speech is therefore a political question that should be understood beyond the narrowly defined legal stipulations and criminally prosecutable actions. As a term, hate speech is defined by various different disciplines, thus being understood in different ways, which makes it difficult to efficiently address the problem of the spread of intolerance, xenophobia and discrimination against marginalized social groups. Yet discriminatory language that addresses a wider array than the mere legal framework of criminally prosecutable acts incites a search for ways to subvert the existing practice and seek ways for empowerment of the subjugated. In other words, precisely within the context of freedom of speech it is necessary to address discriminatory speech as hate speech; i.e. as action that is directed against minorities (by way of humiliation, subjugation, exclusion, discrimination and dehumanization). And it is necessary to respond to, call for public ethics, and endeavour to educate the general public on the negative consequences of hate speech.

Who generates hate speech?

It is important to distinguish between, on the one hand, amorphous multitude of individuals who, in principle, do not reach the general public with their statements and acts and, on the other hand, political actors, decision makers, policy makers, who are all factually important generators of public discourse and therefore bear the greatest public accountability for the consequences of their rhetoric and actions. Consequently, it is the political actors – at local, national and European level – that bear the primary responsibility for the rise in hate speech. It is therefore crucial to draw attention to systemic inequalities and call for accountability of political elites, whose actions facilitate the rise of hate speech, the likes of which we have recently also witnessed in Slovenia. It is necessary to draw attention to the systemic denial of the rights of marginalized groups – quintessentially migrants and refugees, whose voice holds an underprivileged position in society. By allowing open calls for the killing of refugees we are as a society dangerously close to a normalization of anti-immigrant inflammatory, racist rhetoric that creates the conditions for the outbreak of violence.[8]

Relating to hate speech, past action of the Prosecutor's Office of the Republic of Slovenia indicates that the standard response to complaints is to predominantly refuse them. There is hardly any case law in the field of treatment of hate speech in Slovenia and the authorities have obviously chosen a path of maximum tolerance that corresponds to the North American concept of freedom of speech. With Slovenia's legacy of being a socialist republic in the former Yugoslavia, this is somewhat understandable, since the collective memory of the once infamous Article 133 still haunts the understanding of what constitutes free speech.

Namely, better known as "verbal delict", this article used to thwart freedom of speech in Yugoslavia. However, enabling the right to express one's political views freely in public is far from at odds with also guarding the humanity of minorities and prosecuting discrimination. Yet this seems to be what predominantly informs the current fear in Slovenia of allegations of the infringement of free speech.

Calls for the killing of refugees are an extreme form of hate speech and should therefore be immediately clearly and publicly rejected as inadmissible. It is, however, not the aim of this chapter to dwell on whether or not calls against migrants should be taken up by the police and the prosecutor's office. According to the existing legal regulations, in Slovenia any incitement to hatred is vetted against a question of whether or not it is inciting a threat to "public order", since only public peace and order are in fact subject to protection according to the applicable law, whereas vulnerable groups as such are not. What I nevertheless wish to reiterate is the following: the rhetoric of governmental actors has been caught up in security discourse that in consequence vilifies refugees and criminalizes migrants (for more, see Pajnik in this volume). Rather than contributing to the solving of the humanitarian disaster that was termed "refugee crisis", the political actors have exacerbated the plight of refugees, and in effect also the local population. The consequent rise of fear in the past months since Slovenia has experienced a pronounced number of refugees crossing its territory has thus expectedly also spawned hate speech. Rather than contributing to the moderation of public debate, treating refugees with dignity, and the unavoidable phenomenon of migration as a fact that should be addressed in humane terms, the ill-prepared governmental mechanisms of refugee reception and registration only strengthened the perception of

refugees as a nuisance and a threat, in this way directly contributing to the increasing occurrence of anti-immigration hate speech. It is therefore vital to talk about accountability of political representatives and expect of them as elected representatives to clearly condemn every expression, rhetoric and action that is degrading, discriminatory and racist. Hate speech, as witnessed in Slovenia, derives its legitimacy precisely from the actions and rhetoric of the political elites.

Conclusion

Since Slovenia faces a lack of mechanisms for the prosecution of hate speech, resulting in the fact that it is permissible to say practically anything, a number of civil society actors have lately taken up the initiative to act. A number of individuals and initiatives have taken a stand against hate speech, including resorting to public exposure of those who spread hate speech. In the face of a growing number of calls for the annihilation of refugees, especially Muslims, the state apparatus has long remained silent, even though Article 63 of the Constitution of the Republic of Slovenia prohibits any incitement to discrimination, intolerance and violence. Yet any and all discussions of hate speech are inevitably connected to the debate on freedom of speech, since this is considered one of the cornerstones of democracy. At the same time, freedom of expression also remains one of the most contested rights. Since in Slovenia hate speech remains a largely non-resolved topic, there is an even higher need for alternative mechanisms of response, as well as continued cooperation of existing key actors responding to hate speech in the public debate.

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8   Graffiti with swastikas and Celtic crosses have vandalized the premises of a local centre that collects help for refugees in Novo mesto, followed by a Molotov cocktail that was thrown at the gates, and recently also a letter threatening with arson. Moreover, on two separate occasions, pigs' heads and blood were thrown on the construction site of the Islamic cultural centre in Ljubljana. For more, see Kajtazović (2016) and Svet za odziv na sovražni govor (2016).

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Migration in the Mirror of Mediatized Anti-politics

Mojca Pajnik

ABSTRACT

The chapter analyses the "media making" of migration, on the example of the "refugee crises" in Slovenian context. I analyse the political parallelism, i.e. the adaptation of the media to the agenda of the political parties in the context of "mediatized society", connoting permeation of politics with the media and the media with politics. Media reporting on migration is used to show the declining responsibility of (public) media in their relation to the public. Instead of providing space for informed deliberation media echo the elite discourse. It is shown how media reproduce framing migration as a threat to the nation and to society, thus acting as a propaganda-like tool to serve the elite political and corporate interest in the context of "post-democracy".

Keywords:

Migration, media, mediatization, politics, anti-politics, refeudalization of the public

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Šentilj (accommodation centre), 2 November 2015

The refugee camp in Šentilj was set up as an accommodation centre. There are several smaller (as shown in this photo) and one large heated tent, which are all equipped with folding beds. Unfortunately, the camp was often overcrowded, exceeding the capacity to accommodate 2000, thus some people had to sit and also sleep on the floor. In this camp, refugees had access to food, clothes, toilets, running water and medical assistance. However, food was distributed at specific hours and groups of refugees that arrived to the camp after distribution time and were told to leave the camp before the next food distribution were left hungry.

Media in the function of staging the elite

Since the mid-1990s, the media across Europe have been reporting about migrants crossing the Mediterranean Sea, counting the drowned day by day, highlighting the misery of the "naked humans", but rarely reporting about the fallacies of European migration regimes and the interventions of western forces in the Middle East and elsewhere. From 2015, following people on the move, fleeing from war, political, economic and military turmoil in Syria, Afghanistan, Iraq etc., the media, largely adopting the discourse and attitude of the political elites, have made those migrating into the dangerous subjects causing "the huge refugee crisis in Europe". Since the autumn of 2015, we have largely witnessed media discourse following the discourse of the political actors oscillating between the alleged solidarity with migrants and viewing them at the same time as those potential culprits for the many problems in Europe. In this chapter I address the question to what

extent journalists make use of the language in their own writing, and to what extent they report its use by strong political actors, focusing on the sample of the selected media in Slovenia.

Public reasoning and acting is largely naturalized in contemporary mediatized societies as acting of the elite. The shift in understanding the media sphere in Kantian terms, as a space for practicing public use of reason, as citizens' right to communicate to viewing media as a tool for the elite to present itself was conceptualized by Habermas (1962/1989) decades ago as "refeudalization of the public". Property owners, the lords of feudalism, were formed as a "representative public" that functioned to present their power in front of the people. Later, with liberalism and the consolidation of representative democracy, the bureaucratic apparatus of the state was formed as "the public" that represents itself – through media – to the audiences (citizens as spectators). With the rise of neoliberalism the apparatuses of the strong states from the centre (in contrast to those from the periphery) were joined by global corporate capital using the media as a channel for self-representation and reinforcement of their own power.

Scholars from the critical Frankfurt school have shown how citizens, normatively viewed as an active public, were instrumentalized in the context of the developing mass society into recipients, a passive audience that consumes *infotainment* offered by the media. The media as a sphere for public reasoning faded away to give space to the mediatized communication of the elite that represents its power in-front of the people. The "elite" or the "strong" public (Barber, 1984/2003) replaced the idea of the public as citizens' activation and deliberation with the "institutionalized public sphere" or the bureaucratic elite. Through processes of mediatisation of society connoting permeation of

politics with the media and the media with politics, making media dependent on the functioning of the political elites (Mazzoleni and Schulz, 1999), the elite was consolidated in the belief that it advocates public good, but was also established in its self-presentation of the public good: the elite is the public good.

The idea of "good society" that is there for the public is not something that emerges through citizens' deliberation, rather, the elite becomes – through its visibility in the media – the good in itself. This reduced the idea of the media as a sphere of deliberation to serve as a mirror that simply records the whereabouts of the elite. In this context – and the theme of the refugees in Slovenian media (in 2015) is an exemplary case – we are witnessing the assimilation of the media agenda with the agenda of the government. Reporting about migration and refugees, the media largely turned on the microphones to constantly repeat the government discourse and agenda, reproducing migrants as a threat to the Slovenian nation and society.[1]

The reporting about refugees is a telling example uncovering the media in their attitude towards the public, reducing the public to mere recipients of government discourse, and, what is more, reducing the meaning of *the political* to parliamentarism, to the discourses and policies of the political parties. "Parliamentary fetishism" from Marxist terminology captures well the media attitude towards politics: whatever comes from the "strong publics" is for the media *per definitionem* worth considering, or even "a must" to consider, actually, without any consideration or judgement about *what* comes from the elite. The media are echoing the "what", even if of no public value, or even if the "what" is, for example, a manifestation of racism. The "what" always finds a primetime placement in the media; the media are always there to turn on the microphones.

If the prime minister says migrants are a threat that needs to be controlled and if he repeats this several times, then the media follow and repeat the speech: migrants are indeed a threat.

The anti-politics of "disoriented journalism": Enthroning migrants as a threat

Reducing politics to parliamentarism, to reflecting (only) the whereabouts of political parties, their leaders and the supporting state services is best shown in news programs on both the public and private television. If the private television finds the excuse in its very private and market-oriented program, where it is supposedly legitimate that the private "eats up" the public, then the public broadcasting, if we are at all to value its purpose and legal frameworks, has no excuse. Politics should not be treated as party politics only. Politics, in Arendtian terms (Arendt, 1958/1996), is what citizens perform together; politics is about "good old" reasoning, debating, deliberating, acting, intervening etc. that are nowadays so fashionably replaced by objectified and neutral journalism, feeding the political and corporate interest, or by desk-top more or less resigned liking on social platforms.

Each time the prime minister or some other political figure spoke about the refugees being a "serious threat to security" – which happened regularly in the period between August and December 2015, several times a week or even on a daily basis, the media were there to reproduce the speech. This occurred for example, when holding a press conference to announce an in-

creased border control, when introducing policies, such as the militarization of the borders and of society by increasing the power of the army (granting the army the authority of the police by an *ad hoc* change of the law on defence), or "securing" the borders with razor-wire fence or, when speaking at meetings in parliament in Ljubljana, in Brussels and even at the UN conference etc. In addition, news primetime TV programs are also an example of how not only national, but the EU elite discourse finds, most often un-reflected, allegedly objectified representation by correspondents in Brussels or Berlin who report about important speeches of important people. We have seen from studies on propaganda that if speeches are repeated, then their meaning is most likely accepted by the public, as a normal, natural and even the only reasonable response, regardless of the content.

Fetishizing "strong publics" is in the media sphere closely related to the selection or, better, the non-selection of journalistic sources. The reductionist understanding of politics matches the use of the sources – largely sources of strong publics are used, most often just re-used, with no critical reflection of content, at the expense of the sources coming from "the weak publics" of civil society, NGOs, activists and intellectuals, including, in the example of migration, the many volunteers working on the ground. Their reports found no space in the media. And when they did, they were largely presented as a (weak) counterpart to the responses of the state (government, police, army) or as legitimizing the strong public's agenda.[2]

What politics is really about, i.e. the negation of equating it with the elite, is understood by the media (and the elite) as something radical, unreal, utopian or idealist (cf. Zadnikar, 2005). In this context it comes as a no surprise to witness the non-use of "alternative"

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1 My analysis in this chapter uses references from migration studies and normative theory of the media. Observations of media reporting on migration in the period from September to December 2015 mainly draw on televized reporting, particularly the public broadcasting, its primetime news program, while similar observations can be applied to the functioning of several other media, including print, radio and online media, for analysis see www.be-gunci.net. The analysis here draws on personal notes and observations collected by the author.

2 These reports – importantly – found space in other publications, cf. several reports published in the *Journal for the Critique of Science* (2016, no. 262), see also the chapters by Frebutte, Ladić and Vučko in this volume.

sources by the media in reporting about refugees, or of minimizing, often adopting a paternalist tone, the struggles of no border movements, volunteers, NGOs etc. The weak or, better, the alternative publics are never primetime news, no space is offered to seriously discuss ideas of politics emerging bottom-up. To the contrary, if and when these publics are "covered" by the media, when they receive media attention, then in broadcasting this brings marginalization of alternative voices that are presented as having no real power to change the status quo. Instead of acting responsibly towards the public, the media, by downsizing the importance of various civil initiatives, serve to strengthen the "institutionalized public sphere", showing, again, one layer of how political parallelism, i.e. the fusion of media with political elites, is reproduced (cf. Hallin and Mancini, 2004).

Reducing politics to the policy of the elite and by so doing downsizing the true meanings of politics is what constitutes media in their administrative and anti-political function since the rise of mass society. Reflecting the inner mechanisms of instrumentalization of the media, this should not only be understood in terms of ideology – instrumentalization as something that comes from the outside, from the strong powers of the elite that exploit the media and that latch their own powers to media workers. To the contrary, media are an active agent in reproducing the environment of hostility towards citizens' politics. They do this, as I have already stressed, first by focusing their unconditional attention to the elite discourse, no matter how alienated it is from citizens' (including migrants') needs. Second, the anti-politics of the media are produced by the unprofessional professionalization of the journalistic field. We have been witnessing for decades the declining of journalistic values such as that of responsibility that relates the media to the public, i.e. the media are there to provide space for public communication, to serve the public and secure the public good. Instead, media professionalization has asserted values that bring alienation from the public, such as

objectivity, neutrality that have been largely transposed in a European context from the so-called liberal media systems represented by the North American media where the media sphere has been deregularized and left to the invisible hand of the market which then separates good (economically efficient) from bad (non-profitable and publicly responsible) media.

Critical professionalism, practicing judgement in the public gave way to the strengthening of factographic reporting, covering the mere facts of a story, objectifying the reality and by so doing actually producing a picture of a distorted reality. One such example is explaining in front of the cameras that the fence has been torn down by the revenging refugees who on top litter and set camps on fire. The public should be informed reasonably, not factographically, its reason and judgement, and not stereotypical representations should be stimulated by the media. How is the broken fence related to the migration policies adopted by the government and the EU is one question that should not remain unanswered (yet it did and it does). As the public we have been faced with several similar news depicting migrants as "out-casts" that do not belong in "our" societies: we have witnessed news that enforced images of migrants as potential criminals, i.e. stressing the possibility of some migrants being terrorists, statements highlighting migrants' possessions such as mobile phones spreading doubt over the justified reasons for their flee.

Media should offer *orientation* to the public rather than feeding the audience with (allegedly) objectified facts. Reporting to capture every (insignificant) moment of an event, reality-show-like reporting, where the most important journalistic standard is to be plugged in non-stop, to be present and on the lookout is what produces and reproduces reality, without providing any guidance on how to interpret reality, how to judge and to think about it. Rather, the media offers the consumption of reality.

Abuse of language: Media collaboration in "solving the migrant question"

One example of disorientation of the media and the lack of any editorial policy (having no policy is becoming a policy) is seen in the example of adopting various names for migrating subjectivities. Literature on autonomy of migration (Balibar, 2004; Papadopoulos and Tsianos, 2007; Mezzadra, 2011) has taught us to view subjects who are on the move not as victims, but as "nomads of the present" who disrupt the certainties, break the rules, cross the borders, rupture the status quo, and bring possibilities to critically rethink societies and the way they function. Such reflections hardly find space in the media that treat migrants as victims or perpetrating illegals. A large majority of news used several namings for migrants, such as refugees, asylum seekers, illegals, foreigners, economic migrants etc. without any reflection of the meanings, the difference of the terms, not to mention that it was impossible to imagine any news items that would question the very terminology that functions to differentiate people, us from them, the good from the bad, the deserving from the undeserving, the useful from non-useful. Journalists seemed frustrated for not being able to simplify stories of migration and they ended up using five different terms in one short news item producing good examples of what we could name "disoriented journalism". Saying as much as possible, producing a cacophony of voices, in as little time as possible, the more confusing and unreflected, the better.

A telling example of political parallelism (Hallin and Manicni, 2004) is the separation of the term refugee that was most often contrasted with the term economic migrant. When the government spokespersons wanted to stress their humanitarianism, they spoke of refugees, meaning those victims, including many women and children, who flee from war, and Slovenia and Europe should help them. When they wanted

to reinforce border control, they would advocate for the separation of refugees from the undeserving economic migrants, many young males who would do better staying at home and helping to save the burning "motherland". And when they introduced new borders, when they wired the country with razor wire, it was opportune to add to the undeserving economic migrants the group of potential terrorists. The media largely adopted the government agenda – when wanting to stress the need for a Europe of solidarity, then the term refugee was often used, when discussing migration policies the mixture of terms pointing to those undeserving was used.

What is more, the media not only conformed to the political agenda, they even worked to reinforce it: severing the migration policy was justified by the media by using euphemisms, such as "the floods of migrants", "an overwhelming wave of migrants", "migrants are like a torrential river", "migrants are like a spilling water that always finds a hole to overflow" etc. Migrants were largely reinforced by the media as a threat, presented as a natural disaster, reinforcing the idea or an emergency situation which all worked to justify the migration policy, a policy that I have analysed elsewhere (Pajnik, 2015a) as a policy of "institutional racism". The manifestations of the state apparatuses reveal institutional racism at the border (Pajnik, 2015b), where racism is directly (re)produced at the intersection of political (refugees as a threat to the nation), legal (changing laws to "secure" the nation, enforcing police and army powers) and medical (disinfect the camps and protect the health of people (excepting refugees)) racial discourses and practices. Not addressing such issues, to put it very bluntly, the media are not only reflecting, but collaborating in the production of institutional racism. Such collaboration that shows lack of media autonomy resembles the "cooperative role of the media" (Christians et al., 2009) usually at stake when issues are framed as an emergency (war, crises, independence etc.), and largely has the reporting on migration reflected such role of the media.

Pragmatism of wording is tellingly shown by H. Arendt in her essay *We refugees* written in 1943. If today the term refugee points to a person who has been so unfortunate as to arrive in a new country with no means and has to be helped, before a refugee used to be a person driven to seek refuge because of some act committed or some political opinion held. And being a persecuted Jew Arendt explains how she did not like to be called a refugee:

We did our best to prove to other people that we were just ordinary immigrants. We declared that we had departed of our own free will to countries of our choice, and we denied that our situation had anything to do with "so-called Jewish problem". Yes, we were "immigrants or "newcomers" who had left our country because, one fine day, it no longer suited us to stay, or for purely economic reasons. (Arendt, 1943)

The terminology used is never neutral; it always reflects social and political regimes. Language is closely tied to thinking and acting, as we have seen in history how fascism was born with the support of a hardly recognizable abuse of language, as shown again by Arendt (1951/1973) in her discussions on the origins of totalitarianism. Fascists and Nazis never spoke of killings, murder, liquidation, rather, killing the undeserved meant "evacuation", "seeking and implementing solutions" or, ultimately, "solving the Jewish question" – and who else if not the media is a better tool to assist in "solving the migration question"?

At various occasions we have heard how one should not compare contemporary "disposal of migrants" (Bauman, 2004) with particularities of racist and fascist regimes of the past. But it is the very duty of the intellectuals to do so, to reflect resemblances, to relate the current disposing of migrants to similar disposals done in the past. There are important differences, of course, but the present and the future exists through the past, and we need to reflect contemporary

manifestations of racism and fascism that never ceased to exist, rather, they take on news forms (Pajnik and Valenčič, 2015).

Too many times we have witnessed the media's attempts to reproduce problematic speeches, including those that explicitly incited hatred, such as, for example, speeches by certain Slovenian politicians and other public and non-public figures who even invited gas chambers and shooting to "clean up" migration. In a European and American context we have recently witnessed, to name just a few examples, Cameron addressing migrants a "swarm of people", Le Pen speaking of bacterial migration and Trump calling Muslims should publicly wear identification tags – remember the use of the Star of David to expose the Jews?

Reclaiming the media, cutting the wire in "post-democracy"

The rise of neoliberalism in the 1960s and 1970s embodied in the anti-politics of Thatcher and Reagan, accelerated the rise of what Crouch (2003) has termed "post-democracy". Politics in post-democracy has been turned into a spectacle, into a commodity to be sold, with the professional assistance of public relations experts, to the customers on the market. Centres of "strong publics" globally and nationally, and the transnational corporate elite are pulling the strings, disconnecting citizens from politics – through media. The media thus adapt by enthroning the "commercial speech", which is fused with self-interest of the elites, reproducing institutional political communication as "political propaganda" (Miller and Dinnan, 2004). If radio was once severely abused as a propaganda tool for the reinforcement of fascism, then, today, the media should be questioned for assuming a similar role,

i.e. for acting as "the mouthpiece" of political parties and other powerful groups (Wood and King, 2009: 2). The fact that Western media orchestrated a condemnation of terrorist attacks in Paris on a Black Friday, the 13th of November 2015, but were silent on "their" (not "ours") victims of similar attacks a day before in Beirut (or in previous days in Iraq) is one telling example of "propaganda bias" of contemporary media.

Another exemplary case pointing to the significance of language as well as the need of the media to critically reflect its use is related to the setting up of the wire to reinforce border control, and to its media representation. When the Slovenian government (in November 2015) (self)imposed the duty to act as the "sheriff of the Schengen regime", it chose the razor wire as a tool of implementation of "security" (where securitizing the state and its people brings insecuritization to the migrants, cf. Pajnik, 2011). Again, we have witnessed the fusion of media and the government discourse when media, following the elite agenda, avoided naming the wire a wire. Rather, the wire became "a tool to direct migration", a "technical mean" or an "obstacle", a "professional tool", and often it was added that the implementation of the technical border should be left to the "professionals". This produced situations *ad absurdum* when the media reproduced speeches by government representatives who were saying that "the wire is actually not a wire" and that it only "appears as a wire".

We have seen in the past that borders and wires eventually materialized the ruling of the elite by "a firm hand". Instead of reproducing the shifting pragmatism of the elite, the media, especially public media, should critically analyse the speeches and policies of the elite. Rather, they are adopting its agenda and producing news items and shows that largely serve to legitimize the use of the razor wire, reinforcing a dangerous feeling that it is actually safer to live within a wired state. We see how the media in general

and the public media in particular fail to reflect the meanings of the terms used, investigate references, seek for alternative sources, and they do not provide informed, but rather objectified meaning-making. The reporting on migration is one case that shows how a public medium acts to represent political parties in front of the public, as described by Habermas.

Media models that are subordinated to the powers of the political and corporate elite – "government or parliamentary-led model of public broadcasting", according to Hallin and Mancini (2004) are vulnerable to instrumentalization for propaganda-like purposes. And propaganda, as we know, flourishes best in circumstances where politics has collapsed, where the distinction between politics and the police, between solidarity and order of repression vanishes. The circumstances of "post-democracy", as Crouch (2003) reminds us, have produced the diminishing distinctions between political parties; the uniting of the left and the right into the "extreme centre" (Ali, 2015) has the capacity to unite people in the *Volksgemeinschaft* that has in history spurged exclusion and racism. Propaganda flourishes where reason declines, where space for argumentation shrinks and where a fictive world is formed, doubting in which becomes unrealistic. To avoid propagandistic instrumentalization, media should reclaim its responsibility to the public and the public should demand responsible media.

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Refugees, Migrants and Others: The Demand for World Change or How to Think and Understand the Problem of Superfluousness?

Vlasta Jalušič

ABSTRACT

The problem of contemporary refugees seems to be connected with war and privation on the one hand and with the existence of borders of nation-states which prevent the free movement of the people on the other. This chapter once more opens up the question, what kind of problem the existence of nowadays' refugees really is, how to understand it and make it visible in its main dimensions. It sheds the light on the phenomenon of superfluousness as the source of the "refugee problem" and the key feature of the new form of global government. Two sides of the phenomenon of superfluousness that are crucial for understanding the situation in which we find ourselves in regard to the so-called "mass migrations", the problem of "refugees", "migrants" and "us" are discussed.

Keywords:

Refugees, migrants, superfluousness, double dehumanization, depoliticization, Arendt, Agamben

INTRODUCTION

"We are people, not animals," shouted one of the refugees (of approximately 1000) detained anywhere up to two years on Manus Island, Papua New Guinea, where two years ago Australia had set up a so-called "transit zone" in which it packs the refugees – actually a camp in which the so-called boat people are crammed together. The Australian government sees this refugee centre as a successful and efficient solution. The government "solved" the refugee "problem" with a special (external) territory which it created with financial bribes, while at the same time creating a few extra jobs for the locals. It thereby

Šentilj (leaving the accommodation centre), 2 November 2015

A group of refugees on the photo was about to leave the accommodation centre in Šentilj and go towards the Austrian border, located roughly 400 meters away. In October and November the police often simply opened the fences and shouted "go, go" and "move" to the refugees. Some people did not even understand what was happening, since they had just arrived to the camp not long ago and were told they can settle, change clothes, sleep or wait for food. This often created panic among people. When everyone began to run towards the border, young men or adults travelling alone were the fastest and were in front of the families which remained behind as they could not run fast enough and then also had to wait the longest to cross the border.

frightened the prospective comers to Australia, thus substantially decreasing their numbers (see Andrew, 2015). The European Commission obviously has something similar in mind with its suggestion of transit zones on Schengen borders. Actually, transit zones of sorts already exist both on European borders (Lampedusa, Sicily) and on those internal ones that the refugees cross. This gave rise to a sort of a transit corridor, albeit improvised. However, this improvisation and temporariness only contribute to establishing a "practice" and gaining experiences which will consolidate and will probably be used more broadly.

At the moment of writing this text, the Slovenian government has been putting up a razor wire fence on the border with Croatia in order to "protect the Schengen border" and prevent, not the arrival, but the alleged possible "dispersal" of refugees along the border and across the territory of the Republic of Slovenia. This is the second time in the short history of independent Slovenia that we are faced with the arrival of a great number of refugees, although this time, except for a very small number of them, the refugees do not remain on the territory of Slovenia.

The first "wave of refugees" came to Slovenia in 1991 and 1992, at the beginning of the Yugoslav Wars. Slovenia's direct involvement in that conflict was short-lived and did not yield mass casualties. Initially, the people reacted to the first arrivals of the refugees with great solidarity. However, Slovenia soon closed its borders, refusing to accept any more refugees, although at that time it did so without erecting any barbed wires or barriers. It opened refugee centres which accommodated large numbers of people. It was then that the dark truth of the treatment of refugees first came to light, namely, that it had not changed much since WWII. Although in view of the European and Slovenian historical struggle against National

Socialism and Fascism, one would have expected there to be a certain awareness about the fact that the refugee problem and the states failing to protect certain groups of people are symptoms of and also the very basis for the emergence of these forms of governments, such as National Socialism.

In those years, the Slovenian authorities introduced (invented) the status of a "temporary" refugee, thereby literally undermining the international legal basis that protected displaced persons. This enabled a long-term detention of people in refugee centres and their consequent loss of time in a prolonged life in limbo. Parallel to this in 1992, the Ministry of the Interior carried out the erasure of certain groups of people from the Slovenian Register of Permanent Residents, thereby unlawfully depriving them of their legal status of permanent residents of Slovenia, which can be understood as the original crime of the Slovenian state in the sense of a literal administrative reduction of one group of inhabitants to bare humans, resulting in their absolute exposure to the violation of their rights, including the right to life (see Jalušič 2007). At the same time, in the last twenty years, the tolerance to all kinds of public statements about the so-called Others has gradually increased. On the basis of the attacks in New York in 2001, as well as later in London and Madrid, and finally in Paris in 2015, which are presented in the Western horizon as paradigmatic cases of "Islamic terrorism", an elusive ideological enemy was formed (cf. Jalušič, 2015, Bartov 1998) growing stronger and more powerful with every act of the struggle against it. But I will not follow this line of thought here; this was only to indicate the growing phenomena of superfluousness as the background of this writing.

It seems as if the key reason for the current waves of refugees and the European problem relating to this issue can be found in (certain) wars, especially

the war in Syria and its neighbouring states.[1] But it is not so. Of the 11.8 million displaced persons from Syria, six percent had come to Europe by November 2015 (Al Jazeera International, 2015), while the majority had sought refuge in nearby countries, particularly in Yemen, Lebanon and Turkey. At the same time, a large number of refugees come to Europe from other areas and continents, especially Africa, sub-Saharan Africa in particular. In 2015, more than 845.000 people crossed the Mediterranean Sea, of which at least 3500 drowned on this dangerous journey (Al Jazeera International, 2015). This aroused moral indignation in Europe, which bore no political consequences, except a vale of tears (cf. Štefančič, 2015). These refugees (and many others) are categorized as "migrants" or, according to the latest differentiation in the media and by some politicians, as "economic migrants".

In the "policy-making" politics (that is, today's political technology), the definition of the problem dictates the way its solutions are proposed. And the solutions proposed in relation to the mentioned definition of the problem revolve around the measures for reducing the flows of refugees, that is, the number of refugees, and confining them by means of gathering them on European borders, and around the simultaneous activities for stopping the war (concretely in Syria) either by military intervention and/or negotiations.

Though I shall avoid exceeding the word count of this article by not continuing with an in-depth discussion on the hypocrisy of the big players who help instigate an armed conflict only to defuse it later by the very same means, I would however like to point out that with the war against ISIL intensifying, the rhetoric of "solving" the refugee crisis is explicitly mixed (especially after the Paris attacks) and is increasingly

driven by the notion of protection from terrorism and security. The checks and the restriction of free border crossing are (according to the latest variants) to be applied not "only" to refugees, but also to "citizens" on account of many of them supposedly taking part in military operations abroad. The implications are far-reaching. All countries inclined to totalitarianism need an internal elusive enemy as the core of their policies.

At no point do these "solutions" deal with the problem of so-called economic migrants who are seen merely as "opportunists" that want to take the easy road to obtaining the benefits of the welfare state in the most developed European states (without wishing to assimilate to "our" cultural values). This "problem" is being solved, on the one hand, as an alleged problem of economic underdevelopment, in particular, as the issue of reducing global inequality as part of the "development aid" package, and on the other hand, as the problem of the "integration" of migrants into European environments.

Holes of oblivion

In 2015, the so-called "Balkan route" somehow naturally reduced the number of direct crossings of the Mediterranean Sea and thus also the number of fatalities. But the consequence of such a "natural" problem-solving, that is, the flow cleaving another channel for itself, are not promising. In general, the refugee problem increasingly appears to be and is publicly presented as a problem related to a force of nature and not as a result of people's activities and actions, especially certain people in certain governments and corporations (which would be logical in the case of wars and consequent shortages),

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1   In this case, the term "state" is applicable only partially, since these are demolished and destroyed states not only literally, but also in the sense of state institutions.

and also our own *nolens volens* civic involvement in this doing. In short, the problem of the "waves of refugees" is considered more a "natural disaster" than a political problem. Because it is not being solved as a political problem with serious human and political responsibility, it is actually becoming similar to a natural disaster, which is approached in a merely *ad hoc* humanitarian way, even more so since the new form of global government has become a social force that functions as a "natural necessity", so to speak. On the other hand, we can claim that the mass arrival of refugees appearing as a "natural disaster" also contributes to it being tackled with measures similar to those used in the cases of such disasters. This of course contributes to a faster introduction of the "state of exception" as a situation in which special measures are introduced so quickly that they can no longer be called laws and in which the only recourse we have when it comes to the treatment of people is pure human kindness, charity and similar humanitarian ideals.

The mentioned horizon of tackling the refugee question is also a consequence of the fact that the laws that regulate border crossings, the granting of visas and asylums are still not based on the experiences and lessons of the mass waves of refugees from earlier times, e.g. during and after WWII. Moreover, we could say that because this experience was not reflected – as totalitarianism was understood as the regime of a dictatorship which was limited only to few European countries (Hitler's Nazi Germany, Mussolini's Italy and their allies, Stalin's Soviet Union) – and thus because of the abstraction from the often unheard of treatment of refugees in numerous other European and American countries at the time, there was no adequate consideration of the matter. Perhaps this is also the reason that after WWII the appropriate laws and other solutions were not created – in applying for the status of a refugee, one still has to prove that there is a justified "fear" or threat that one will be persecut-

ed, tortured or killed. Privation, poverty, threat of war, etc. are not reasons that "justify" fleeing, while to obtain "subsidiary" and "temporary" protection, which European directives provided in addition to the Geneva Convention as *ad hoc* solutions and responses to the case of refugees from the Yugoslav Wars, one's life needs to be directly threatened or one's rights permanently or systematically violated (See Council Directive 200155/EC).

Two sides of dehumanisation: Double superfluousness of human political capacities

Both contemporary war and contemporary privation, signal a phenomenon that has been researched and named only to a certain extent. Contemporary popular authors such as Giorgio Agamben and his followers talk about the biopolitical structure of power, partly drawing on Hannah Arendt and/or Michel Foucault (see Agamben, 1998, Braun, 2007). What is crucial here is their pointing out the phenomenon of the superflousness of people in today's global situation of inequality and neoliberal economy. From this perspective, it seems as if only special groups of the population are superfluous (which some governments, corporations or other groups, etc. try to get rid of in some way or another – the persecuted, the oppressed, the expropriated or those that Fanon (2004) would name the "wretched"), among them contemporary refugees.

When Hannah Arendt (1986) analysed this phenomenon in her book on total domination and some other essays in more detail, she reached an important conclusion. The basic feature of the new form of post-totalitarian power, the power that comes after the experience of total domination

in 20TH century Europe, is the generalisation of the phenomenon of superfluousness. What does this mean? It means that it is not only those parts of the population that a group in power tries to get rid of that have become superfluous, it means that superflousness does not apply merely to a particular part of the population, a group of people or their special characteristic.[2] It applies to crucial human capacities, not only in terms of labour (like the superfluous labour force described by Marx – which applies to a large part of the European "autochthonous" population), but also in terms of creation and action.

This problem actually always has two sides. The problem is not only that one is deprived of one's rights, that one no longer enjoys the protection of any government, but that one is deprived of one's "right to have rights", so of the right to live in a concrete community that guarantees one's rights (the right to live in a state or the right to a state and citizenship). Herein originates the dehumanisation of refugees who – paradoxically – are not expelled from humanity, but precisely in this position become the "bare" human being that the declarations of human rights refer to when speaking of human equality, and are in the end subject only to the wager of friendship and liking, the grace of love and humanitarian aid. Hannah Arendt points out that we are actually not equal due to any natural presupposition, rather equality is the

result of human organisation insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights. (Arendt 1986: 301)

Or in other words, there can be no equality without the state guaranteeing it. Equality is thus essentially

bound up with the establishment of a political community that guarantees this equality (and in it also its inhabitants, especially its citizens, mutually). Dehumanization of those who are stateless, the reduction of them to bare human beings is exactly the result of the fact that they do not belong to any political community whatsoever:

The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas, which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them (...) only in the last stage of a rather lengthy process is their right to live threatened; only if they remain perfectly 'superfluous', if nobody can be found to 'claim' them, may their lives be in danger. (Arendt 1986: 295-6)

On the flipside of this deprivation or loss of the right to have rights (which is not the loss of freedom, but ultimately the loss of freedom to fight for freedom) are the people that enable such deprivation and dehumanisation. In this regard, we could speak about those that are directly active in this doing, either as the creators or the executors of power and laws (often the bureaucracy of a state), but also about those that can be considered observers, bystanders, who often or mostly belong to the passive supporters in the sense of their tacit consent or at least non-opposition to the measures that enable dehumanisation, the loss of the right to have rights. They are most often not directly deprived of the freedom to fight for freedom (and equality), rather they renounce (usually not explicitly) their political capacities or the capacity to act as responsible citizens, political beings. This happens for various reasons, often due to the feeling of powerlessness in the face of contemporary

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2   These are the main characteristics of genocide.

Kafkaesque bureaucratic power that increasingly more often merely manages the population (in the framework of the "statistical laws" of society), also via numerous incomprehensible and unclear public decrees (Jalušič, 2009: 123ff). By renouncing political capacities, people start acting (and speaking) as if they are innocent victims of inevitable processes, the powers that are responsible for their lives (conspiracy theories) or dangerous others (neighbours, distant or close threateners, terrorists, etc.). I myself call this phenomenon "organized innocence" (Jalušič, 2007), and it refers to groups of people who live in contemporary states or political communities, and thus *do* "have the right to have rights".

It is precisely this side of dehumanisation, the organized innocence, that in its boomerang effect leads to "us" being the ones who are most affected by the dehumanisation of the "others", refugees and similar groups.

Innocence and depoliticization as the imaginary of humanitarianism

Contemporary refugees are therefore no longer the ones who are persecuted for something they have done; they are no longer persecuted due to their actions. The motive for their "flight", for them leaving a certain territory where they have lived, is their superfluousness and not any special political or radical beliefs for which they could be imprisoned. In short, they do not belong to the group of classical refugees who could ask for so-called political asylum. Actually, they are completely and straightforwardly apolitical and were not necessarily physically endangered when the process of them being

deprived of their status began. In most cases, it was only when they were deprived of the usual framework of the state and political subjectivity, country affiliation, citizenship and the right to residence, and when, at the same time, also their passport that would enable them to move freely from one country to another and settle down somewhere was actually taken from them[3] that they also became physically endangered.[4]

The deprivation of the framework of citizenship and the right to residence can take place in two ways. Either this status is denied by the government of the state in which one finds oneself or this state "fails" or is destroyed (which can today be a direct result of either a civil war or an attack/intervention from the outside, a combination of both or the destruction of the state or its political and legal system by non-violent, economic means). In her analysis of imperialism, Hannah Arendt (1986: 207ff) already stressed that the essence of the new global form of governance is that it does not establish new political units-states based on European values (equality, freedom, democracy). On the contrary, it creates a global rule of transnational corporations, with states founded on the rule of the people and democratic laws that do not support global expansion only standing in its way. The destruction of states is one of the main characteristics and preconditions of the new global form of governance. The destruction of people as a political category is the next step. And mass waves of refugees and numerous people without any legal protection are merely its consequences.

The fact that the refugees have not done anything gives rise to another moment – a sort of an almost inhuman innocence of contemporary refugees, most often accompanied by the element of complete unpoliticalness in the sense of them being prepared to accept anything that befalls them – to make compromises and adapt

entirely to the circumstances of the situation in which political action seems impossible due to the fact that their world has vanished, assimilate and deny their specificity, past and identity. This depoliticization stems precisely from the fact that, as refugees, they became "bare" human beings, representing members of a species, who must only be interested in preserving their own lives and are implicitly or explicitly expected to renounce all their other special characteristics, capacities and needs.

Lately, an early text by Hannah Arendt ("We Refugees"), promoted anew by Giorgio Agamben (2008), has become very popular. It is precisely in this text that Arendt declares the key problem of contemporary refugees (in her case Jewish refugees, the ones their enemies put in concentration camps, and their friends in detention camps) to be their strategy of assimilation, adaptation and the concealment of their refugee experience due to their complete exposure and unprotectedness, which causes radical depoliticization:

remember that being a Jew does not give any legal status in this world... If we should start telling the truth that we are nothing but Jews, it would mean that we expose ourselves to the fate of human beings who, unprotected by any specific law or political convention, are nothing but human beings. I can hardly imagine an attitude more dangerous... (Arendt, 2007: 273)

After pointing out the consequences of assimilation (which Arendt understands as the strategy of all-round adaptation – and not only as adaptation to the customs and the language of the country in which the refugees settle) for their political potentials, she ascribes the refugees the role of the "vanguard" of their peoples – insofar as they do not conceal the story of their past and their identity:

History is no longer a closed book to them and politics is no longer the privilege of gentiles. They know that the outlawing of the Jewish people of Europe has been followed closely by the outlawing of most European

nations. Refugees driven from country to country represent the vanguard of their peoples – if they keep their identity. (Arendt, 2007: 274)

"Their identity" here does not refer to an "inborn" national, religious or cultural identity (of the refugees), although the passage could also be interpreted in this way. It refers above all to their stance of "conscious pariahs" who will not deny their past or origin. This is a strategy of resisting the reduction to a mass and the model of one single "human" in it, represented by a "refugee", as the representative of the "human race" in general: for total power tends precisely towards reducing the singularity of people, the capacities and properties of individuals to mere characteristics of "one" human being that can arouse only "humanitarian sympathy". Encouraging the preservation of identity subverts the mentioned "absolute innocence" and the constant adaptation to the circumstances in a society where discrimination has become "a great social weapon by which one may kill men without any bloodshed" (ibid.).

In the first instance, the politicization of refugees is thus seen in the enunciation of their own truth and the establishment of an awareness about who and what they are and why they are refugees (and that is their "identity") – what brought them to the dead-end situation of superflousness, of being merely people, how they have lost the protection of the state (if ever they had it).

The refugees we encounter here and now, the refugees coming to Europe today, are also ascribed the characteristic of innocence, passivization and surrender to the masses of which part they become as members of the "refugee flow" (nature metaphor), governed either by human traffickers (illegally) or state bureaucracies (legally). This is a consequence of the distress they are faced with in trying to save their lives. Precisely the maintenance of this characteristic of a passive and "innocent" refugee is needed if the humanitarian view and the depoliticized solving of the "refugee problem" with humanitarian means are to be preserved. On this

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3   Or they do not have a passport or their passport is worthless due to the fact that they belong to a state which is seen as a "failed state" (to speak in recent jargon of international relations from which often comes the conclusion that state is a failure as such to be replaced with something else (see Ehrenreich Brooks, 2005).
4   In the recent past, the erased were subject to such a process in Slovenia, as I describe elsewhere (Jalušič, 2007).

basis, the masses can be treated as a sort of a natural necessity that can at best be monitored, its life flow controlled, etc.

While they are being reduced to the bare preservation of life, the refugees are reproached for wanting to go to the most developed European countries, for if all they want is to save their lives; one wonders why they do not remain in the countries that can first grant them asylum. This line of thinking ignores the question of what happened that has led to people being reduced to "bare" human beings. The humanitarian approach does not ask political questions, but relies on compassion as something that needs to be aroused so people would "help". This anti-political sentiment of humanitarianism further reinforces the refugee's complete dependence on love, good will, etc. Any action, engagement or resistance on their part or visibility not in line with the conventions of humanitarianism are understood as unheard of violations casting a shadow on the presupposed innocence of those that need to behave as passive, begging and grateful victims.[5] When some of them lie about where they come from (in fear of not being accepted) in terms of citizenship (and the EU is introducing "language tests" to prove "who" they really are) they try to apply at least a little of their autonomous capacity to act and decide about their destiny. The total depoliticization of refugees takes place simultaneously with the depoliticization of the inhabitants of European (and other politically and socially still seemingly solid) states, especially in the framework of the notion that the refugee problem can be solved within the heretofore legal and political framework of asylum and migration policies, and above all within humanitarianism, without reconsidering the question of the meaning and the function of the state.

The procedures of depoliticization

In this section, I describe primarily what we have been witness to in Slovenia in the last few months. The regime of "refugee policies" that contributes to depoliticization was established in the following steps: first, an atmosphere of the state of exception and the necessity of "temporary" solutions that the state of exception supposedly entails were created. The refugee problem was discursively articulated as a "natural disaster", independent of human factors. In government discourse in general, a new type of euphemism started to predominate, creating bumpers in the public that prevent government actions and measures to be given their real name and justify the measures in advance: for example, ensuring "that the life of the country is not disrupted", "emergency measures", "controlling the influx of migrants" (website of the Ministry of the Interior), "technical barriers" along the border, etc. Based on this, they quickly started adopting the "needed" legislative solutions, which were actually introduced by way of decrees: the introduction of a special police and military regime on the border and militarisation with the amendments to the Defence Act. Whenever government representatives and politicians appeared in public, they emphasised first and foremost the security of the population and its property. The attitude towards the migrants was thus articulated primarily as a security and only secondarily as a humanitarian problem, while there was no talk of its political dimension. The politicians mainly did not oppose the racist public discourse (presented as freedom of expression) related to the people entering the country, some even encouraged it (see Bajt in this volume). The mobilisation of repressive apparatus happened in a way that aroused fear: armed police and military forces operated in

full gear. This security articulation of the problem led to a perversion that paves the way for a unique technique of mirror accusations which is one of the mechanisms of dehumanisation in a genocidal processes – in the end, the inhabitants of Slovenia were declared as the "real victims" of the "waves of refugees", while the refugees were/are described as calculating, hypocritical, virtually exploitative "economic migrants" who do not want to stay in the less affluent countries (which, by the way, also do not want to accept them), or as potential terrorists.

A special regime formed in the field of "working with the refugees". The refugees have been isolated and segregated from other people (the inhabitants) and the public in general, they were fully dependent on the care of major humanitarian organisations and the regime created by the police and the military. At the beginning, this meant that journalists were forbidden or otherwise denied access to the refugee population. In Slovenia, journalists were granted access to the assembly centres only after the initial situation was to a large extent already rectified following the demands of numerous NGOs and humanitarian organisations. The second instance was the regime of registration and the concentration and control of people in a very small and initially completely unorganized space, which resulted in depriving people of every intimacy and basic interpersonal space. Families were often, if not in principle, separated. The entire organisation functioned as a set of (often nonsensical) rules of conduct, which often amounted to disorganisation, since either nobody knew all of the rules or they were invented on the spot – for example, the regime of constant waiting, etc.

As opposed to the security dimensions and the accompanying outbursts of racism, the humanitarian dimensions were stressed primarily by the NGO scene, which also mobilized a large number of volunteers who then worked in the framework

of humanitarian organisations. In general, the humanitarian dimension prevailed over any serious political consideration, and in this respect the opposition to the allegedly temporary government measures, such as the spontaneous amendment to the Defence Act or the erection of the razor wire fence along the border, has been completely unsuccessful (thus far).

Vanguard of the 21st century?

The "refugee crisis" and its solving by way of depoliticization draw our attention away from the problems we should be dealing with. Firstly, regardless of the need for a dose of humanitarianism in such moments, the focus on the humanitarian "solving" of the problem conceals the key question: how to enable, as soon as possible and in the long term, those who are excluded from political units and the law to be included (have the right to have rights) in a political community?

A critique of current forms of sovereignty, "integration policies", and the problematization of nation-states as being the only ones competent to protect those left without any rights are relevant, of course, and so is the opposition to all acts that cause people to lose the status of a legal person. But from the reduction of people to bare life we cannot infer any special revolutionary potential or even a new political subject, nor predict, as Giorgio Agamben does in his interpretation of Hannah Arendt, that through the "politicization" of bare life, new emancipatory policies will be created which will abandon the concept of citizen, rights and so on. In his recently very popular text, "Beyond Human Rights" (Agamben 1996 and Agamben 2008, also published under the title "We Refugees"), he draws on the mentioned text by Hannnah Arendt (2007).

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[5]   The flipside of this absolutely innocent victim of humanitarian policies is the imaginary, absolutely evil Islamic terrorist.

While quoting that the refugees are the vanguard of their peoples, he draws revolutionary conclusions regarding the politicization of refugees or "bare life", and announces the need "to abandon decidedly, without reservation, the fundamental concepts through which we have so far represented the subjects of the political (Man, the Citizen and her rights, but also the sovereign people, the worker and so forth) and *build our political philosophy anew, starting from the one and only figure of the refugee.*" (Agamben, 2008: 90, emphasis added).

Such a conclusion cannot be drawn from Arendt's analysis of the dangers that the phenomenon of "bare life" has in the post-totalitarian age, unless we ignore the key finding that "bare humanity" brings about a complete depoliticization, worldlessness and invisibility to which those who come into such a situation react with despair or violence. We could see such expressions of despair in the case of refugees who had sewn their lips together (see analysis in Owen 2009). The call for abandoning the concepts of citizen and rights can only be read parallel to the neoliberalist claim about the need to replace state/s with a non-state mechanism of global government.

If the "refugee crisis", considered as a "humanitarian crisis", can draw our attention to anything, it is the following: the emergence of such a great number of people, whose human capacities are superfluous, is evidence of the actual state of the new global world and of the fact that the problems of refugees will not be solved as long as they remain without any status, any country willing to accept them. And it is only in this framework that refugees can carry a "political message" and represent the "vanguard of

their peoples": namely, insofar as they point to the actual source of their endangerment, the failure of the state.

In *The Origins of Totalitarianism*, Hannah Arendt defined the problem in a very precise way and also suggested that the solutions of the problem of people without citizenship, which signals the phenomenon of superfluousness, by no means lie in the abolishment of the state or in any kind of cosmopolitan global state. Quite on the contrary, the situation we have found ourselves in shows us with blinding clarity the lesson from the 20th century that keeps repeating in the 21st century: without the protection of the state, without belonging to a political community that can protect human rights, these rights (and the people they are supposed to protect) become mere spectres – even if they are additionally protected by an international institution or court, they ultimately have to be implemented by a state.

Secondly, the reduction of the "origin" of the refugee problem to the question of wars is also a source of depoliticization. For the "production" of refugees as superfluous people has for a long time not been a matter of wars, violence or persecution, etc. This is clearly evident in the differentiation between "refugees" and "migrants".[6] Refugees are seen as the victims of political persecution and an immediate danger of war or violence so they are granted an existence in the framework of their struggle for bare life, which is why the law defines them as justified to seek asylum – in a country that is as close as possible to the source of the problem. "(Economic) migrants" are considered as those who

are concerned about more than "bare life": a better life than the one they are leading, or even a good life, which has been a leitmotif of the legitimacy of political communities in Western political tradition from Plato and Aristotle on.

An ambiguous joke I have heard recently (it is from the time of socialism, but has been made topical in this context) captures precisely this dimension of the problem. It goes like this:

Mujo[7] dies in a car accidence on the "Balkan refugee route". When he comes before Saint Peter, the latter asks him: Where would you like to go, you wretch, heaven or hell? And Mujo replies: Can I go to Germany?

The joke can be read in two ways. According to the first interpretation, the joke seems to suggest – in a slightly racist way – that Mujo is as calculating as the contemporary refugees who did not want to stay in Turkey, Greece, Slovenia or Hungary, but want to go to Germany, where they will enjoy the greatest privileges of the welfare state. Numerous citizens of the parts of Europe that do not have the German standard of living react with doubt regarding the "verity" of the refugees' distress and the necessity of leaving the environment in which they lived, and by creating an image of a sly and elusive migrant Mujo, who calculatingly heads to the country with the highest standard in the world to live his life there.[8] Mujo not wanting to go to heaven and preferring to go to Germany truly shows the slyness of this Balkan Schlemiel. But in what sense? Why on earth would Mujo not prefer to go to heaven, the land of milk and honey, but instead wants to go to Germany, where he will certainly have to work?

When asked by journalists why they wanted to go to Germany in particular, many refugees in the current crisis did not point out its standard of living, but the significance of the "status" they would thus obtain, that is, the status of a "person" with a German residency paper or perhaps even a passport; a dignified life, since Germany is after all a country whose constitution guarantees the protection of human dignity in its preamble. For Mujo knows very well that to become a German resident means to obtain a "political framework" – a framework for a safe and good life – and that nobody will persecute him because his name is "Mujo". He knows very well that he wants to go to a country whose borders will guarantee him a status that nobody will be able to deprive him of. The difference between the bare human being "Mujo" and the German resident "Mujo" (even if he does not have a German passport) is like that between night and day.

Mujo's logic clearly shows the problematic position of those leftists who think that states need to be abolished instead of created and made to fulfil their function in the sense of them being political communities which are supposed to provide people with the framework for a good life: for the flow of capital and information, and for the elites in the global economy, states can be superfluous, but for a refugee, they mean "everything" (see Hufer and Falguni 2015). Mujo's logic also tells us something about the most political conclusion of the ancients that happiness cannot be reached individually and independently of any political community, that it is not contentment reached in a private otherworld, but is possible only in the circumstances of a good, democratic political community.

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6   The following description gives the essence of this differentiation: "The word 'migrant' describes a person who leaves home to seek a new life in another region or country. The word is used broadly. It includes those who move through legal channels—to take a job in another country or region, for instance, or to re-join family members—as well as those who move across borders without a visa or government approval. (The latter is often called irregular or undocumented migration.) The word "refugee" describes someone fleeing war, persecution, or natural disasters. Under international law, no one can be sent to a place where they face a real risk of being persecuted or seriously harmed by others. Those claiming this status can ask for asylum—legal permission to stay as a refugee—which brings with it rights and benefits. This application process can be lengthy and complicated. Not every asylum seeker will be recognized as a refugee, but every refugee is initially an asylum seeker" (Open Society Initiative for Europe, 2015)

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7   Mujo represents one of the typical characters of Bosniak jokes.
8   The fact is that numerous young inhabitants of less affluent European countries are moving to richer parts for the same reason, but this phenomenon is seen and explained in a considerably different manner.

Conclusion

In view of this, we could perhaps go a step further and conclude with the following. It might be that precisely those who do not flee from immediate war and do not try to save their bare lives from violence in a straightforward sense, but flee from their reduction to bare human beings in an economic sense (as a reduction to beings that have minimal or even no needs, especially no human – political – capacities) represent the actual global political demand for equality and justice – and thus the demand for the abolishment of the existing global form of government. The problematical aspect of this government is not that it represents a system of different "national" states with different political systems that have borders, it is the fact that it abolishes all the main functions that the state contains in its idea – for example, restricting unlimited greed and creating a space for rights/justice and freedom:[9] This abolishment does not take place "only" outside the "Western world", as has been the case since the times of imperialism, but everywhere, "there" and "here". It is evidenced not only by the neoliberal "laws" of economic enrichment that tend more and more towards reducing the likewise increasingly greater shares of the population of richer countries to bare life, but also by the more and more bureaucratic government measures that tamper with the elementary principles of democracy and introduce ways of adopting decisions that portend an increasing superfluousness of our political capacities. The modes of introducing measures for the "control of migration flows" in numerous European countries, the current tightening of asylum legislation and the erection of a razor wire fence, in which, as politically responsible, the citizens of Slovenia are *nolens volens* involved, are signs of the fact that here and now, on the territory of the states that are supposed to protect them, we are renouncing the ideals of equality and freedom. The syndrome of organized innocence lies precisely in the renouncement of civic and thereby political capacities, since it is precisely the citizens and those with a citizenship status who are in a position of political responsibility in relation to those who do not have citizenship or have been deprived of it. The danger of being deprived of citizenship as the framework of political life therefore no longer concerns only those that are no longer protected by any state, so refugees, but also the ones living in a state that (at least to an extent) still protects us. The greater and clearer our

inability to treat stateless people (i.e. refugees, added by V.J.) as legal persons and the greater the extension of arbitrary rule by police decree, the more difficult it is for states to resist the temptation to deprive all citizens of legal status and rule them with an omnipotent police... (Arendt, 1986: 290)

9   See, for example, Hegel's *Grundlinien der Philosophie des Rechts* (Outline of the philosophy of right), §30, §257, §258, §259 (Hegel, 1972).

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Dobova, 4 November 2015

A man playing his violin in Dobova reception centre. In the back there is a smaller orange tent which was used for registration and one of the three white large heated tents set up as waiting area for refugees who are using the corridor through Slovenia. On that day around 5700 refugees passed through Slovenia which organized their transport towards Austria.

What Can We Learn from the Current "Migrant Crisis"?

Lana Zdravković

ABSTRACT

In light of the increased arrivals of migrants in Europe, and consequently also in Slovenia, the text critically reflects the notion of the state as a nation-state, which produces the situation where the national (if not ethnic) identity is the prototype of the identity as such. Consequently, the image of the migrant is perceived as nothing else, but the Other, someone who deconstructs the imaginary homogenous national community. This Otherness is produced systematically and is prescribed in the dominant understanding of community, which is understood as the community of "us", or as "our community". Within this context, the migrant can be legally excluded, discriminated and even killed. In the text I claim that for understanding the roots of this production of Otherness – which always has bloody consequences – we should start by analysing the production of individuality and identity as such. I claim that the real process of emancipation as political subjectivation is generated not in the consolidation of identity, but just on its borders. Creating a real political community as the community without the Other is based on the process of disidentification as the only real emancipatory action.

Keywords:

Migrants, emancipation, political community, Otherness

INTRODUCTION

The increased arrivals of migrants in Europe and consequently also in Slovenia in the past years have revealed even the slightest doubts about what is in fact the ideology on which rests the idea of a "civilized", "developed", "democratic" West. Latent fascism, racism and xenophobia, with which we are faced today, are the most extreme forms of capitalism at any cost. After decades of brutal exploitation of the Middle East, Africa and Asia (so called third world or the Global South) for the sake of capital: cheap labour force and natural resources (this phenomenon is also known as the "democratization

process", which of course also includes military operations) it is apparently time for "war to return home". The response of "Western" ruling elites – well trained watchdogs of global inequality – which instead of humanity, offer a fence, armed soldiers and tanks at the borders, instead of help, they incite hatred and stir up fear among the people, and instead of a systemic common response, offer only pretence and empty platitudes, is extremely inappropriate. But, can one expect anything else? Defenders of "capitalo-parliamentarism" (Badiou, 1992/2006: 239) through austerity measures, cut in the welfare state, and by delimbing the historically already fought over rights, even demolish their "own" countries and destroy the lives of their "own" citizens. As we can see, for the sake of preserving the *status quo*, that is a global capitalist order of exploitation and domination, they are ready to do anything, even total war. After all, it is the military industry that is one of the main sources of generating profits for the global elite; millions of dead are just collateral damage. It's all part of the same process of the systematic production of the Other on which the structure of a modern state, designed as a nation-state, is based.

In the situation where the concept of the nation-state has been developed as the imagined community of the homogeneous nation (cf. Anderson, 1983/1991), exclusion of all others is an organic consequence. The process of building the genesis of national unity structurally produces redundant people. The image of migrant is the best example of the structurally produced Other, who can endanger the purity of a nation. And in the capitalist world, goods and capital can migrate freely and without borders, while the free movement of people is strictly prohibited. Even more, the word "migrant" receives an increasingly pejorative meaning. For the sake of ease of control,

exploitation and discrimination, the ruling technocrats with the help of law, created different artificial categories of migrants (refugees, asylum seekers, economic migrants, climate migrants), in that way producing the illegality of migrants as such. The aim of the "policies of immigration control" or "migration management" is merely about the reproduction of illegality that indirectly justifies the urge for repressive measures. The EU does not enable secure and legal travel to the European territory, where asylum can be requested. Migrants/ refugees, who have no other options, can therefore reach Europe almost only by the help of organized criminals.

Nation-states of course do not reject all of the migrants, but according to their own interests, make a selective inclusion (cf. Mezzadra, 2008). And this is not a new phenomenon. With the continuation of such a process we are facing real war with a huge number of victims for many years. According to the organisation Fortress Europe, more than 20.000 people (mostly from Africa, Asia and in recent years also from the Middle East) have died trying to cross Europe's borders since 1988. In the year 2014, around 4.000, and in the first half of 2015 more than 2.000 people have died (numbers are not precise, as they are not systematically monitored).[1] Some of them drowned in the Mediterranean Sea, others suffocated, froze to death, or died of starvation and dehydration, hidden in trucks, or killed by border police. If they ever *do* succeed in reaching Europe, these so-called illegal migrants from so-called third world countries are the subjected to a special regime of limited personal freedom without committing any crime. They are closed in detention centres, usually not much different from common prisons or, as we can see in recent months, in concentration camps in open space (usually near the border) without any

conditions for decent stay. The basic task of those institutions is to remove people from a country they had arrived to, and, in most cases, to return them to their so-called home countries. It is a systematic and efficient constitution of inferior(ized) population in the name of "Western civilisation".

The image of the migrant is a symptom of racism of the modern nation-state

The exclusion of migrants, which we are facing in Slovenia as well, is based on the concept of equalization between citizenship and nationality, introduced in the name of sovereignty of modern states. The basic problem is that not only national affiliation (as a cultural category), but also citizenship (as an administrative category) emerges as an individual's essence, the contents of which depend on the country and time of birth. As it can clearly be seen today, "wrong" nationality or citizenship and the possession of the "wrong" passport can destroy many lives. Meaning: if you are not fortunate enough to be born as a citizen of one of the "Western" states, your life will most probably be significantly more complicated in the even that you would like to emigrate, live and work in a "developed", "civilized", "democratic" state.

This leads to the differentiation between universal human rights and social, economic, cultural and political rights in a state. On one hand, we have universal human rights defined by the "transnational" Universal Declaration of Human Rights (1948)—the successor of the famous Declaration of the Rights of Man and of the Citizen (1789)—, and on the other hand we are limited by the sovereign nation-state, as the Declaration is not a binding document. In this way, universal human rights such as the right to education, work, health and social protection, political expression and so forth are strictly tied to national affiliation/ citizenship. The universal human right to emigrate

and immigrate or the right of free movement, valid for all and always on a declarative level, is in fact always profiled through particular national belonging and legislation.

As shown by Hannah Arendt, the impossibility of realising the "universality" of human rights is radically revealed particularly in cases of persons who do not have the status of citizen of a sovereign (national) state, or, who have lost the support and protection of their governments (Arendt, 1951/1978: 383). A refugee, a migrant or a stateless person, the one who should be a subject of human rights *par excellence* (Agamben's *homo sacer*, 1995/1998), as these are the only ones left to refer to, in fact disclose the radical crisis of that term. As stressed by Arendt, such a person has no place in the world to exist; as being erased from the order of politics means being erased from the norm of humanity. Migrants coming to Europe and Slovenia are just like these persons. The loss of their human rights corresponds the very moment they become "just" a human being, without any other political and social attributes. The loss of their citizenship rights *de facto* means the loss of their human rights.

People coming to Europe are from demolished countries (Syria, Afghanistan, Iraq, Iran, Morocco, Ethiopia, Eritrea, Libya …) where they cannot live decently, but in the Western, "civilized" world they are deprived of citizen rights and are treated as if they were guilty of a crime that they never committed. They simply want normal lives, yet they are treated like criminals, or at best, as some dangerous group that needs special treatment. It is clear that nobody is taking responsibility for these people, who are risking their lives, as they are not perceived as people, as one of us, but rather as intruders, unequal to citizens of the EU.

This is possible, as shown by Balibar, because of long the Western colonial heritage: the colonial subject is a "citizen by birth", whilst the immigrant is not (there is a significant word for immigrant in the Anglo-

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American vocabulary: *alien*). Although more or less integrated in society and partly included in its system of rights and obligations, one can hardly escape from the minority status. In return for finding a job she/he can enjoy training and protection, being, therefore, *similar* to a citizen, but on condition of respecting the provisions of a "contract" that can never be specified by her/himself, which is especially visible in terms of naturalisation or the residence right (cf. Balibar, 2001/2007: 59). And although officially we live in post-colonial times without colonial powers and colonies, we are actually facing the process of "re-colonisation of social conditions" (ibid.) which started in the 1980's as a consequence of economic globalisation and new inequality, both on a local (national) and global level. We cannot ignore the fact that migrants coming to Europe are precisely from countries, which were basically the former colonies of European countries. But, whereas the colonial situation was constitutive of the socio-historical context of classical racism, a neo-colonial situation introduces the transnational phenomenon of "racism without races", which Balibar names "meta-" or "neo-racism" (cf. Balibar and Wallerstein, 1991: 17). It is characterised by two features: first, the place of race or biological heredity has been taken by terms ethnicity, culture and invincibility of cultural differences, and second, the discourse has changed from the notion of colonialism to the notion of immigration.

The term "immigration" primarily denotes people who come from disrupted states and nations, or people whose nationality (in the postcolonial period) is not pure and clear (new "dangerous class"). The word "immigrant" almost certainly denotes someone who originates from the East or the South, but definitely not from the West. Crucial generic preoccupation of racism, the obsession with purity of blood is, therefore, changed into a defence against the mixing

of ("higher" and "lower") cultures. At first sight, in neoliberal discourse these cultures are not inferior, but irreducibly different ("different than ours"), which actually means less worthy (inferior). Because the concept of culture acts as a mask or euphemism for race, whilst racist arguments are hidden behind "anthropological-cultural" arguments, it is clear that fear and hatred toward migrants that we are facing within Europe and Slovenia stems from beliefs that it is all "only" about the dangers of the incompatibility of life styles and traditions.

In Slovenia, since August 2015, when an increased arrival of migrants has been recorded, the state representatives in the public discourse mostly marked them as a threat, a deviation from normality, the rupture in the normal state situation (as discussed also by Pajnik in this volume). By the state officials, the migrant issue has primarily been perceived through the prism of security, so one of the main speakers in the public sphere became the Minister of the Interior and its General Secretary, who constantly gave statements about the level of security threatened by the arrival of migrants (cf. MMC RTV SLO, 2015b).[2] One of the first public statements made by the Slovenian Prime Minister regarding the migrant situation "Slovenia is the guardian of the Schengen border" in September 2015 paved the way for creating an atmosphere of fear, where we have to protect ourselves and our "way of life" (MMC RTV SLO, 2015a). This also cleared the way for the prevailing technocratic-legalistic discourse about "(real) refugees" who (maybe, if really necessary) have to be accepted and "(economic) migrants" who have to be rejected. In the situation where migrants themselves and civil society representatives proposed a safe and organized corridor, which would help migrants to reach their destinations, the Slovenian Prime Minister exposed: "Corridors are not the policy that should be encouraged"(ibid.). With such a

statement he revealed an extreme anti-political attitude where the needs of people are far less significant than the interest of the state, capital and "big players". Ideology of cynicism, where the interests of the state (technocracy governance) are above the interest of people (humanity), reached its peak in the Prime Minister's statement: "I feel bad as an individual, but as Prime Minister I have to take responsibility" (24ur. com, 2015). This clumsy statement could of course not hide the fact that the Slovenian government did not take any responsibility either towards migrants or towards citizens and residents of Slovenia. Moreover, with such a non-responsible attitude, the Slovenian government made room for incitement to hatred and violence (cf. Bajt in this volume). All these empty platitudes could not hide the fact that Slovenia's solution to dealing with people escaping war and poverty was to erect a razor wire fence, assign armed soldiers with police powers and place tanks at its borders.

However, it would be naïve to think that Slovenia, as an EU (and Schengen) member state has any autonomy in dealing with the "migration crisis" in comparison with the general EU response. It is no secret that for many past years and in 2015 especially, the EU has been increasingly strengthening its other name, Fortress Europe, declaring total war on migrants. Since 2004, the EU has maintained a system of surveillance, and protection of its external borders against unwanted newcomers, carried out by the Frontex Agency (headquarters in Warsaw, Poland) with a budget of slightly under 90 million Euros in 2014. In 2013, an additional system Eurosur (European surveillance) has been established in order to control external borders by the newest technological means: drones, satellites, ships, helicopters, with a budget of 144 billion Euros until 2020. The plan of an openly violent fight against migrants is masked with the fight against organised crime, disclosing the extreme hypocrisy of the EU. One of the reasons behind migrants deciding to venture on such dangerous journeys (bearing in mind that this journey may prove fatal to them, their family and/or

friends) is that the EU does not enable a secure and legal travel to the European territory, where asylum can be requested. Therefore, migrants/refugees are left with virtually no other option of reaching Europe but to seek assistance from organised criminals.

It is clear that the aim of "policies of immigration control" or "migration management" is not to end so-called illegal employment and immigration, neither the illegal labour trafficking which supplies that employment, nor the illegal conditions resulting therefrom. On the contrary, it is rather about the reproduction of illegality that indirectly justifies the urge for repressive measures. It is about producing illegality in advance in order to later create a security apparatus that causes the "syndrome of insecurity" which affects the whole state. Such a policy is among the institutional drives behind the current production of racism, apartheid and preservation of the condition where an immigrant always stays an immigrant.

The urge for radical reformulation of the concept of belonging to a nation-state

If not before, today, in the middle of massive hysteria due to the increased arrivals of migrants in Europe, we can certainly claim that the migrants are the Jews of the 21st century. We can only hope that in this case the "final solution" will not be used. Consequently, as stressed by Balibar, we can achieve practical, true humanism, only if we conceptualise it in the form of effective antiracism. That means striving to achieve trans-nationalistic policies of citizenship (anti-nationalistic ones).

As Balibar claims, to construct "the citizenship in the world" means to enable rights and act in the

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2   Of course I am not claiming that there are no dangerous people among migrants but there are dangerous people among Slovenians and Europeans as well, so the essentialization of migrants on that basis is highly dangerous and irresponsible, especially when it comes from state officials.

world as a political community. It means inventing the concept of citizenship wherein the modes of belonging are founded on the development of it, not vice versa. More precisely, this means the liberated, expanded right to enter and stay, to work, educate, be politically engaged and so forth, in any state; i.e. the right to equal political rights for all inhabitants, regardless of their nationality, on a local, national and (any) community level. However, Balibar stresses that it is not the (neo)liberal principle of "free choice", but the true extension and respect of human rights that requires actual equalization of rights of all inhabitants living together in a certain state (community), and therefore constitutes a genuine ethical request for radical political equality.

The concept of the "democratisation of borders" (ibid.: 132-133) should be understood in the same context as borders, which are currently, and more than ever before, labels for sovereignty. They are a non-democratic condition of democracy that operates mainly as security measures, social segregation, unequal access to resources for maintaining the quality of life, and even as institutional distribution of livelihood and death and a basis for institutional violence. The demand for the democratisation of borders, therefore, means the demand for freedom of movement for all individuals, usually treated as passive objects of arbitrariness of authorities within states. For a rich man from a rich state – a member of a 'dominant nation' (ibid.: 61), not to mention members of the "international bourgeoisie" (ibid.) – the crossing of a border became a formality, a place of symbolic recognition of his social status; but for a poor resident of a poor state, a member of an "inferior" or criminalised nation, asylum or job seeker, the border crossing is not a right, but rather a privilege, it is not only an obstacle which is hard to overcome, but also a place across which she/he goes again and again; after all, it is a place of living: an upsetting "space-time zone, almost a habitat" (Balibar, 2004: 406).

Political subject origins at the borders of identity

Understanding the concept of citizenship as an unconditional access to fundamental equality is crucial, as it articulates the relation between the individual and the collective. Balibar insists that it is enough to be human (without attributes) in order to be a citizen (a subject of politics). The struggle against the denial of citizenship is, therefore, the life of emancipatory politics (2004: 15-17). This concept of radical democracy:

far beyond exceeds a simple theme of "accepting the Foreign" (not to mention levels that start with inclusion and integration, but finish with assimilation). Because *everybody*, including the "indigenous", must at least symbolically pledge their citizenship's identity that was obtained or inherited from the past, and *reconstruct it in the present* along with all the others: with those who currently share the same "destiny" on a strip of the Earth, regardless of where they come from, how long they stay at a place, and irrespective of "legitimacy". That does not mean that the past does not exist or that it is of no use, but that it is not a heritage, that it does not provide a right of firstborn. That means that there are no "first residents" of a civic territory. (Balibar, 2001/2007: 161)

Consequently, the rebellions, struggles and demands for active political participation performed in particular by non-citizens themselves are a paradigm of emancipatory politics. As we can see from the current situation as well, only organized migrants were able to collectively break the Schengen system and open the important wider debate about borders, citizenship and belonging within the nation-state (cf. Kogovšek Šalamon in this volume). This hard and constant fight is empowered by various movements in Europe that demand universality of life and going through the

struggle to provide citizenship for all.[3] By doing so, these movements contribute to developing the notion of active citizenship, but also of activist solidarity that in the long term – despite understandable fluctuations from mobilisation to hopelessness – demonstrates surprising continuity. Such understanding of citizenship is precious also in terms of encouraging civil disobedience, which is, "with all possible risks, a key component of citizenship that helps re-establish it during a crisis, or when its principles are questioned" (ibid.: 67).

If we try to snatch from the identitarian terror that determines which identities are more and which are less important (minorities that reinforce the majority, foreigners who confirm natives, non-citizens who verify citizens, "they" who consolidate "us"), we need to defend the construction of the community not founded as an identitarian one – based on a nation as a dominant and exclusive identity – , but as a political one, hence assuming radical equality of whoever with whomever, where the identities are understood as multilayered, changeable, and ambiguous. The only possible community that is based on radical equality is, therefore, a community co-constructed by singularities that do not refer to an identity, i.e. "whoever", generic singularities deducted from any identity, any belonging to a community.

As stressed by Rancière, true political subjectivization, or, emancipation emerges not in a process of identification and fortification of self- (national) identity, but just the opposite, in a process of symbolic relativization of it.

The process of subjectivization is a process of dis-identification or declassification. More than construction of the identity or identification, it is about the crossing of identities, relying on a crossing of names: names that link the name of a group or class to the name of no group or no class, a being to a nonbeing or a not-yet-being. (Rancière, 1995: 67)

It is always "an impossible identification, an identification that cannot be embodied by he or she who utters it" (ibid.). At the same time, this is not to say that we stop being who we are, but rather establish a certain distance from the signifiers that adhere to us or that are attributed to us. We develop the awareness that all identities are always transferable, changeable and ambiguous and that they are merely a construct of a specific identification. Only then, when we have freed ourselves from all identity or identification restraints, can we become aware of the equality of anyone and everyone. A political subject, therefore, can begin to exist only within the divide between two identities: the one we renounce and the one we symbolically appropriate. What is crucial is that neither of the two is completely 'ours'. Sooner or later we will have to understand that we can be in the same situation as migrants coming to Europe today. If we want to build a political community based on inclusion and not exclusion, we have to understand that if one group of people is erased from the norm of equality, it is our political responsibility to fight that all of the people are equally included in that norm.

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3   These movements have devoted more of their attention and networking efforts to this subject in the time of global demonstrations against the governance of capitalist elites and the fortifications of financial capital (IMF, World Bank, WTO), especially since Seattle 1999. Some of the key movements in this respect are *Global Project* and *Ya basta!* in Italy, *No one is illegal* in various countries, *Sans-papier* in France, *Dostje!* and later *Nevidni delavci sveta (Invisible Workers of the World (IWW))* in Slovenia, currently also Anti-Capitalist Block and Anti-Racist Borderless Front.

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Conclusion

What does all of it mean for the current situation that we are facing within Europe and Slovenia? First of all, when dealing with the migrant issue we have to bear in mind a bigger picture.

We have to base our understanding on the fact that the "migration crisis" is not a crisis caused by migrants, but a crisis caused by the ideology of violent reproduction of global inequality in the name of capitalism, masked with parliamentary democracy backed by the concept of law. In such a situation migrants are simply the first, most vulnerable and most visible victims. But generally, such an ideology systematically produces inferior, redundant, dispensable people all over the world, regardless of their nationality (people of different races, women, poor people, homeless, unemployed, people of different nationalities, ethnic, cultural, sexual minorities etc.). And this is exactly what global protests, starting in 2009 onward, are all about. They warn us about the crisis of capitalism as the form of production and on crisis of parliamentary democracy as political form.

In the political struggle for radical equality, it is urgent to reinvent the emancipatory ways of constituting the subject as a political subject that goes along with the constitution of the community as a political community, which includes all, without residues. For that there is a need to reinvent new ways of organizing the economy in more decent ways without exploitation, domination and hierarchy, and there is a need to find new ways of organizing political communities, so as to enable real political participation for all. Nation-states must not be understood as private property of their citizens (people who live there). And prosperity of the citizens (and the whole "Western world") must not be developed on the exploitation, demolition and repression of non-citizens/migrants (the

"Global South"). On the other hand, a real political community is not based on the concepts of acceptance, tolerance, and integration of non-citizens/migrants dependent on the respective arbitrary good will of the "natives", but rather on the values of solidarity which produce a non-segregational community "for all" or "whoever".

In this way, not only are self-identity, particular community, and belonging/affiliation to it being problematized and relativized, but so is *any* difference, specificity, and otherness, opening a space for "whoever", i.e. potentially for all. That sameness breaks the communitarian, identitarian, juridical, and humanitarian logic. In that case we have to understand that the status of citizen has no political meaning nor moral sense, if it does not apply equally to all. This means that we have to struggle for freedom of movement for all individuals, no matter their nationality/citizenship. Crossing the border should stop being a privilege of rich people from "dominant nations". For now, only the movements, non-formal initiatives and activist organisation based on solidarity are the ones trying to really enact these principles. What is truly needed is for us to start thinking in that direction and reconstruct our society in the way of radical equality, not only for the sake of migrants, but also for our own sake. Migrants are just an example of what could (and will) happen to all of us if this kind of ideology prevails.

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INDEX

Neža Kogovšek Šalamon and Veronika Bajt

Dobova, 13 November 2015

Despite the fact that refugees first received food upon arrival to Dobova reception centre, the system was subordinate to the registration procedure. After registration, refugees could finally take time to eat, however they were forced to do so on the floor, as no tables, benches, chairs or folding beds were available. People were only supposed to stay in the reception centre a short period of time, however it often happened they stayed long hours or even overnight - on the floor.

A Note on Contributors

Veronika Bajt (PhD in Sociology, University of Bristol, UK) has been a researcher and project coordinator at the Peace Institute since 2006, working predominantly on international projects on migration, integration, racism, nationalism, hate speech, citizenship and violence. She has published on topics of migration, gender and the labour market, nationalism, discrimination, national identity construction and practices of Othering, as well as analyses of collective memory construction and nationalist appropriations of history. She was a lecturer at the Masaryk University in Brno (Czech Republic) and at the International University Institute for European Studies (IUIES, Italy).

Born in 1984 in Lille, France, **Marc-Antoine Frébutte** graduated in Human Geography at the University of Zurich. For his Master thesis, he worked on the exploitation of migrant workers in the agro-industry in Italy. Particularly interested in the movements of population, he specializes his research on migration, illegal work and integration issues. From October till December 2015, he monitored and reported for the Peace Institute on the conditions in the accommodation and registration centres for refugees in Slovenia and Croatia. At the same time, he conducted a research on the integration of the volunteers in the transit camps in Slovenia.

Vlasta Jalušič is a political scientist, Senior Research Fellow at the Peace Institute (Institute for Contemporary Social and Political Studies), Ljubljana (Slovenia) and an Associated Professor at the University of Primorska, Slovenia. She has written books, articles and chapters on citizenship and feminism, gender and other inequalities, Eastern European politics and transition, war, violence and Hannah Arendt. Her most prominent work *The Evil of Thoughtlessness. Arendtian Exercises in Understanding the Posttotalitarian Age and Collective Crime* was published in 2009.

Neža Kogovšek Šalamon holds a PhD in law. She works as a researcher and director of the Peace Institute. Her research topics include fundamental rights, administrative and constitutional law as well as migration, asylum, non-discrimination and citizenship law. She is a member of a number of international professional associations, including Odysseus Academic Network of Experts in the field of Asylum and Migration and the European Network of Legal Experts in the Non-discrimination Field. She is the author of "Migration Law in Slovenia" (Kluwer, 2011), a monograph that is part of the International Encyclopaedia of Law. Currently she is working on a postdoctoral research project titled "Fundamental Rights of Citizens and Foreigners in the EU" (2014–2016) funded by the Slovenian Research Agency. In 2016, she will start coordinating a new project titled "Crimmigration between Human Rights and Surveillance" (2016–2018) also funded by the Slovenian Research Agency.

Šentilj (no man's land), 12 November 2015

For most of the time nothing but a few toilets was available to refugees in no man's land between Slovenia and Austria. No water, food, clothes, blankets, even volunteers were not allowed to be present. On one of the rare occasions when they could *be there, they were playing "blind mice" with refugee children. Some of the parents engaged in the game as well, which made the children very happy.*

Maja Ladić graduated in 2010 in International Relations at the University of Ljubljana, Slovenia. Due to her interest in human rights, protection of minorities, ethnic discrimination, ethnic conflicts, social inclusion, gender equality, development and development cooperation, she had already became engaged with the Peace Institute during her student years. She is continuing her education in this direction, as a PhD student of Development Studies (focusing on gender equality or gender dimension in development strategies) at the Faculty of Social Sciences in Slovenia. With a PhD in Development Studies she hopes to upgrade and improve her experience and knowledge she obtained through field work and development projects, which are an important added value to the empirical part of her doctoral dissertation.

Mojca Pajnik is research associate at the Peace Institute and lecturer at the Faculty of Social Sciences, University of Ljubljana. The fields of her research include political and communication theory, focusing on topics of citizenship, migration, racism, gender and media. *Immigrants, who are you? Research on Immigrants in Slovenia* is the first book that she has co-authored on migration, with Marta Gregorčič and Petra Lesjak-Tušek in 2001 (Peace Institute). Recently she has co-edited with Floya Anthias *Contesting Integration, Engendering Migration: Theory and Practice* (Palgrave, 2014), *Work and the Challenges of Belonging: Migrants in Globalizing Economies* (Cambridge Scholars, 2014), and, with Erik Valenčič, *Racism: Cut Up World* (Journal for the Critique of Science, 2015).

Katarina Vučko has a degree in law and ten years of experience in working on discrimination, citizenship and migration issues from the legal, advocacy and research perspective. In 2012, she passed the State Legal Exam of the Republic of Slovenia. In 2009, she joined the Peace Institute where she works as a legal consultant and researcher in the field of human rights. She is working on projects in the field of legal status of migrants, asylum and non-discrimination issues, carrying out legal analysis, lectures and workshops. She has been performing legal counselling and representation for migrants in the procedures for granting residence permits and citizenship. She is active in the European Network on Statelessness and JUSTICIA European Rights Network.

Lana Zdravković (PhD in Philosophy with the thesis "Politics of Emancipation: thought-practice of the militant subject", 2013) is a researcher, political activist, publicist and performing artist. Fields of her research interest are identity, citizenship, migrations, political engagement, radical equality, politics of emancipation, and thought-practice. Fields of her artistic interest include neoliberalization and economization of the arts, political performance, pornography and art, kitsch and trash art. In her engagement she faces rethinking of issues such as: power of presentation and excess of representation, potential of subversion, opening of the spaces of equality as processes of redistribution of the sensible, scandal of the embodiment, identity and belonging.

Reviews

It is not often that a book is published as an immediate response to a problem, more specifically to the political reaction on refugees coming from war zones in the Middle East. Prompt and reflexive writing demands committed researchers that are involved and not just observe as "objective outsiders". The authors of this book are themselves included in political debates and practical activities on the borders. Consequently, they can make analysis also from personal experiences and from different perspectives, which makes the texts especially informative and relevant. It is very important to record and preserve the facts that can so quickly be turned into ideologies because of the constant attempts to cover up, relocate and mask the truth, to "rationalize" or better racialize the problem. The cooperation between the state, the media, the general public and the politicians in the production of ideologies is tight and orchestrated. Not many voices oppose the growing demands to prevent refugees from passing through Slovenia, yet those that exist are loud and sound. The book is a valuable contribution to that.

Looking at the book from a distance it is clear that its chapters have a common message. It seems that the chaotic manner in which the government responded at the beginning of the mass migrations of refugees, followed by the conscious decision to take up a merely repressive role in the management of refugees, opened the doors for nationalistic sentiment that enabled all sorts of activities against refugees. Most of them including hatred, racism and militarism that is legitimized also by the governments' lack of action against them.

The book presents the problem from very different perspectives and levels of inquiry, which succeed to capture the complexity of the phenomenon and presents a highly relevant and competent analysis that will provide readers with a deep insight into the structures and processes of current national, international and global power relations. Refugees seem to be collateral damage and the nation-state the weakest link. The timely benefit of the book is certainly in preserving proofs, giving evidence and recording facts that will preserve the memory.

Vesna Leskošek,
Associate Professor
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The time is ripe for us to look into each other's eyes and admit the truth. In a supposedly civilized world that has not experienced war for a long time, there is more hatred than one would expect, and notably more than is right. Hate speech is percolating slowly from the margins of society to 'mainstream' speech. The spirit of our time is to hate and do so time and again. The bearers of hate speech are becoming leaders of political parties and even countries. It is not uncommon that they get support from the media. Civil society, arranged in non-governmental organizations, seems to be the last bulwark of the system, however, the torrent is strong and the dams are on the verge of failing. Hate speech leads directly to hate crimes. We do not have in mind individual attacks that need to be decisively condemned, though. It is about legislation that, due to procedures, has the outward appearance of democracy, yet whose content is, however, in flagrant contradiction to the respect of human dignity. On one hand we are fighting for children and family life, but on the other we are preventing refugee families from reuniting.

The monograph is such an eye-opener that it actually prevents us from shutting them. The Peace Institute as an indispensable participant and initiator of civil actions and, as a critic of inappropriate political responses, is a collective author of a valuable record of times as they should not be. It is warning us about a slow but persistent escalation of a crisis that has been breaking for at least five years. As we have not been paying attention to it and as only individual states were initially affected by human distress and endangered lives that had to be rescued, the burden was considered their own. At present the consequences of this selfishness are being felt all over Europe and Europe has been portrayed as scheming in the short term.

There is a valuable warning that the law needs to adapt to new circumstances, to meet the needs of refugees, and that the existing provisions on human rights need to be the accepted guidance, given the precedence in possible conflicts of legal norms.

The monograph discusses two possible paths – one is to look 'with eyes wide shut' when facing these phenomena and the other to become aware that sooner or later these rights and compassion will come to an end for everyone if we do not acknowledge them openly.

Dragan Petrovec,
Professor of Criminology
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YEARS OF ASPIRATIONS
FOR EQUALITY

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